

03-01-2024

**ORDERS ON I.A. NO.8 AND 9 FILED BY THE
PLAINTIFF**

The instant applications have been filed by the counsel for the plaintiff for production of documents and to re-call the P.W.1 for further chief examination.

2. In the affidavits, the S.P.A. holder of plaintiff has stated that, the plaintiff has filed the suit for declaration and Permanent Injunction against the defendants. The matter is now posted for cross examination of P.W.1. The plaintiff came to know that, few important documents are not marked. In order to show the boundaries mentioned in the Sale Deed of the defendants and to match the actual boundaries it is necessary to produce the documents. The bills are necessary to be produced to show that, the plaintiff was in possession of the suit schedule property and he has been growing grapes in the same. In order to produce the documents it is necessary to re-call the P.W.1. Hence, prayed to allow the applications.

3. The application is objected by the the counsel for the defendants by stating that, the same is not

maintainable under law. It is stated that, the suit is filed after lapse of few decades. The plaintiff is trying to overcome the admissions made by him. The plaintiff has challenged the Sale Deed dated 01-11-1965 in the year 2018 and contradictorily claiming that, he came to know about the Sale Deed in the year 2007. The plaintiff filed O.S.No. 763/2007 on the file of this Court and withdrawn the same seeking liberty to file fresh suit. It is stated in the said suit that, plaintiff is the owner of the suit schedule property by way of adverse possession. The suit was withdrawn on 16-09-2015, but the present suit filed on 28-02-2018. The plaintiff has not paid proper Court fee in this suit. The defendants are the absolute owners of the suit schedule property. Hence, prayed to reject the applications with costs.

4. Heard both sides.
5. The following points arise for my consideration
 - i. Whether the plaintiff has made out grounds to allow the application?
 - ii. What order?

6. My answer to the above points are as follows:

Point No.I: In the Affirmative

Point No.II: As per the final order
for the following:

REASONS

7. **Point No.I:-** On going through the records of the case it is appearing that, the plaintiff has filed the present suit seeking the relief of declaration and Permanent Injunction. The matter is now posted for cross examination of P.W.1. At this stage, the present application came to be filed. In the affidavit, the S.P.A. holder of the plaintiff has clearly stated that, the documents required to be produced to prove the boundaries of the suit schedule property. It is further stated that, the bills are produced to show the possession of the plaintiff and the alleged Gift Deed is produced to show that, the suit schedule property is situated at the Western side of the subject matter of the Gift Deed. The hospital bill is produced to show the reasons for delay in filing the suit. The learned counsel for plaintiff has argued that, the documents are verymuch necessary to prove the case of the plaintiff.

8. The learned counsel for the defendants has argued that, the suit is barred by limitation and the plaintiff is challenging the Sale Deed of the year 1965 and the suit itself is not maintainable etc. It is to be noted that, in these applications the Court has to see whether the documents produced by the plaintiff are necessary to be produced and whether P.W.1 is required to be permitted to lead further chief examination. The reasons assigned in the application show that, the documents are required to be produced by the plaintiff to prove the possession and boundaries in respect of the suit schedule properties. In order to mark those documents P.W.1 is required to be re-called. The defendants are at liberty to question the documents at the time of cross examination. Accordingly, the plaintiff deserves an opportunity to lead his evidence at the fullest. Hence, I answer Point No.I in the Affirmative.

9. **Point No.II:-** In view of above finding this Court proceeds to pass the following:

ORDER

I.A.s No.8 and 9 filed by S.P.A. holder of the plaintiff are hereby allowed.

The plaintiff is permitted to produce the documents annexed to I.A. No.9.

P.W.1 is re-called for further chief examination by allowing I.A. No.8.

For further chief of P.W.1 by :
08-01-2024.

Sd/-
(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

