

ORDER ON IA 11, 12 & 13.

The defendants have filed IA No.11 to condone the delay in filing the application to production of documents. IA No.12 to file the witness list and also filed IA No.13 to reopen the case for the purpose of further evidence of defendant.

2. In the affidavits annexed to the IA s, in the affidavit the defendant submits that the case is posted for the evidence of the defendant, the defendant has not produced the documents in this case. Smt. Nagarthna died and she has given the property to the defendants through the Will. Hence the Will is the necessary documents to depend the case of the defendant. Further submits that if the document is produce no hardship is cause to the other side. If the document is not produced the defendant will be put to great hardship and inconvenience. Hence prayed to kindly be condone the delay in production of document in the interest of justice.

3. Further submits that the defendant is not filed the witness list after the reminding the suit. The deceased defendant No.4 has bequeath her properties in favour of the defendant No.3 and defendant No.1 and 2 through the Will and today defendant No.3 produced the Will and also the witnesses of the Will. The delay in filing of witness list is not an intentional one and bonafied one, if the witness list is filed no harms is cause to the other side. Hence prays to permit the defendant to filed the witness list.

4. On the other hand the plaintiff has filed objection and submitted that the application filed by the defendant/applicant is not tenable both in law and on facts of the case and hence the same is liable to be dismissed. Further submits that the applicant is liable to be dismissed as the applicant has failed to swear the fact, in view of the memorandum of facts the present application is not maintainable. Further submits that the application is devoid of merits and same is filed with an intention to avoid speedy trail and to delay the proceedings. Further submits that the documents which is sought to be produced through the application are not relevant one and they are not connected to the issues involved in the suit and they are not the suit schedule properties. Further submits that this court has allowed the appeal only on the ground that the

necessary and proper parties are to be added and dispose of the matter and appellate court has only permitted the impleading parties to lead evidence. Further submits that the applicant is not permitted to lead evidence and no opportunity is given to the present applicant to lead evidence. Hence the application is devoid of merits. Further submits that the defendant/applicant are not supported by the affidavit which is mandatory under the Civil Rules of Practice, which is direct to file affidavit to present application. Further submits that the defendant/applicant is required to recall the DW1, which is mandatory and without application for recall of the DW1, the defendant/applicant cannot permitted to lead evidence and hence the present applications are deserves to be dismissed. Further submits that the defendant/applicant has not filed original documents to establish their case and whereabouts the original is not stated and hence the application is devoid the amended provisions Karnataka of the Civil Procedure Code. Hence the application itself is devoid of merits and same is not maintainable both in law and on facts. Further submits that the application filed by the applicant/defendant is deliberate and impleading defendant had only right to lead evidence. Hence the application is liable to be dismissed, the plaintiff/applicant reserves his right urge other grounds at the time of the arguments on IA. Hence court may pleased to dismiss with heavy cost in the interest of justice and equity.

5. Heard the arguments of learned counsel for the plaintiff and defendants.

6. After careful consideration, perused all the records and entire order sheet it is clearly shows that, the case was remanded by the Hon'ble Sr. Civil Judge and JMFC Court, N.R.Pura. After remanded the suit the LRs of defendant No.4 brought on records. After suit was amended. After amendment of plaint the case was posted for plaintiff evidence. The learned counsel for plaintiff submitted that, there is no evidence of plaintiff. Then after, the case was posted for defendant evidence. Now, the present stage is defendant evidence. In my opinion the defendant has to be given an opportunity to put forth his case, if not allowed it will cause great injustice to the defendant. Hence, I proceed to the following:

ORDER

IA No.11 to 13 filed by the defendant are hereby allowed.

For further defendant evidence.

Call on 08.01.2026.

Sd/- 03.01.2026.

Civil Judge and JMFC,
Koppa.