

COMMON ORDERS ON IA NO.8 & 9

The defendant No.1 has filed these applications under Section 151 of CPC, at the stage of arguments, seeking to reopen the above case for the stage of defendant evidence and to permit the defendant No.1 to lead evidence.

2. It is the case of defendant No.1 that he was suffering from serious tenderness and thus, he could not instruct his Advocate to lead evidence. For this reason he could not appear before the Court on 01.08.2023, on the day which the defendant evidence is taken as nil and the case is posted for arguments. If the defendant No.1 is not permitted to adduce evidence, he will be put to injustice, despite hardship and loss. On these grounds, the defendant No.1 has sought for allowing the applications.

3. On the other hand, the plaintiff has filed his statement of objections to present applications contending that the present applications are belated, facts put forth in the applications are false and irrelevant and the present applications is not accompanied with an affidavit. No provision of CPC allows reopening of the case. The defendant No.1 has shown false reason and not produced any document in its support. Both the applications are filed only to defer justice and thus, the applications being divide of merits requires to be

rejected. On these grounds, the plaintiff has sought for rejection of applications.

4. On basis of the above contentions, the following points do arise for consideration:

1) Whether the defendant No.1 has made out sufficient grounds to permit him to adduce evidence?

2) What order?

5. Heard both side and carefully perused the entire materials available on record as well as the written arguments of plaintiff counsel. Now, the answer of this Court for the above points are as follows:

Point No.1: In Affirmative.

Point No.2: As per final order for the following:

REASONS

6. Point No.1: This is the suit of the year 2019 and filed for decree of declaration of title, recovery of possession and consequential injunction with respect to the suit property. The defendants have resisted the above suit by filing his written statement. After the plaintiff has closed his side of evidence, the matter was posted for defendant evidence on 22.03.2024. Till 01.08.2024, the defendants have not come forward lead evidence inspite of imposing costs of Rs.1,000/- and thus, the defendant evidence is

taken as nil. Later, on 09.09.2024, the defendant has come up with these applications seeking permission to lead evidence.

7. The defendant No.1 has based these applications on the sole ground that due to ill health, he could not able to attend before this Court so as to lead evidence. But no documents whatsoever is produced by the defendant No.1. Though the present applications are not accompanied with an affidavit, the same would not fall fatal in consideration of the applications. But, the thing which needs to be consider is that an opportunity to lead evidence is being sought by the other side of the suit. It is well settled principal of law that the matter should be decided on merits by considering the case of both side. Thus, the principal of natural justice requires that the defendant No.1 be provided with an opportunity to lead evidence. The other side will always at an option to cross examine the defendant witness. Accordingly, point No.1 is answered in **Affirmative**.

8. Point No.2: This Court while answering point No.1 has held that the opportunity be given to the defendant No.1 to adduce his evidence. But equity requires imposition of costs on the defendant No.1 to compensate the hardship caused to the plaintiff. Hence, the following:

ORDER

I.A No. 8 and 9 filed by the defendant No.1 under section 151 of CPC, are hereby allowed on cost of Rs.500/-.

The case is posted for Defendant Evidence by: 21.01.2025.

**Sd/-
Pri. Civil Judge & JMFC.,
Mudigere.**