

ORDERS ON IA NO.XIII

The present application is filed during the stage of further plaintiff evidence. The plaintiff has filed this application under Order XVI rule 1(3) of CPC, seeking permission to examine the witness named in the present application.

2. In support of the present application, it is contended that the witness named in the application is fully aware of the facts of the case i.e., plaintiff's possession, cultivation and enjoyment of the plaint schedule property and as such his evidence is very much necessary to prove the case. If the present application is not allowed, then the plaintiff will be put to hardship and injustice. On these averments, the plaintiff has sought for allowing the application.

3. On the other hand, learned counsel for defendant has filed the statement of objections to the present application contending that the application is belated and filed to fill up the loophole and lacuna pointed out in the cross examination of PW1. The plaintiff having failed to file the list of witness within 15 days of framing of issues, cannot take advantage under Order 16 rule 1(3) of CPC. The role of proposed witness has not been whispered in the plaint or in the evidence of PW1. The proposed witness is not material to the suit. On the above grounds and also by placing reliance on the decision of Hon'ble Andhra Pradesh High Court in 1996(2) Civil Court Cases 604(AP), the defendant seeks for rejection of the present application.

4. Heard the learned counsel for plaintiff and also perused the entire materials on record as well as the written arguments of the defendant. Now, the following points do arise for consideration of the above application:

1. Whether the plaintiff has made out sufficient grounds to permit him to examine the witness as sought for?
2. What Order?

5. This Court answers the above points in the following:

Point No.1: **In the Affirmative.**

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

REASONS

6. Point No.1: The present suit is for permanent injunction with respect to the suit schedule property to which the defendant has filed the written statement denying the plaintiff's possession of the suit property and also disputed the plaintiff's father name. It is at the stage of further plaintiff evidence, the present application is filed seeking permission to examine a witness on behalf of the plaintiff, on the sole ground that the said witness is conversant with the facts of the case and therefore his evidence is very much necessary in proof of the plaintiff's case. On the other hand, the defendant has resisted the application on the ground

that the plaintiff ought to have filed the list of witness within 15 days from settling the issues and the plaintiff has no where whispered about the proposed witness.

7. No doubt the plaintiff ought to have filed the list of witness within 15 days from the date of framing of issues whereas, it is the settled position of law that every opportunities shall have to be provided to the parties at the trial itself. Now, the plaintiff is seeking to examine the witness in support of his case. This being the case, if the present application is rejected, then the plaintiff will be put to injustice for not permitting him to examine his witness and such circumstances may also lead for multiplicity of proceedings. Though the defendant has resisted the present application, it is always open for him to cross-examine the witness examined by the plaintiff. The circumstances being thus, this Court is of view to allow the present application. Hence, point No.1 is answered in **Affirmative.**

8. Point No.2: In view of the reasons recorded on Point No.1, this Court considers it fit to allow the above application. Hence, the following:

ORDER

**I.A.No.XIII filed by the plaintiff
under Order XVI rule 1(3) of Code of
Civil Procedure, is hereby allowed.**

**Plaintiff is hereby permitted to
examine the witness as sought for.**

OS.No.103/2020

**For further plaintiff evidence by
29.10.2025.**

Sd/-

(Vishwanath.A)
Prl. Civil Judge & JMFC,
Mudigere.