

COMMON ORDERS ON IA NO. VI to VIII

The present applications are filed at the stage of further defendant evidence. The defendant No.2 has filed the present applications under Section 151 of CPC, Order XVIII rule 17 r/w Section 151 of CPC and Order VIII rule 1A(3) of CPC, seeking recall of DW.1 for further chief examination and to produce additional documents.

2. It is the contentions of the defendant No.2 that the documents which are now sought for production could not be produced earlier due to oversight and mistake. For the purpose of production of said documents in evidence, recalling the DW1 for further chief examination is very much necessary to prove their case. If the present applications are not allowed, then the defendants will be put to irreparable loss and hardship. On these grounds the defendants have sought for allowing the applications.

3. On the other hand, the learned counsel for plaintiff has filed the statement of objections to the applications contending that the applications are highly belated, filed only to drag the proceedings and to harass the plaintiff. The plaintiff has also relied on the decision of Hon'ble Apex Court in the case reported in AIAR 2016 page 300 wherein it is held that the witness cannot be recalled after evidence is closed to fill up the omission. On these grounds the plaintiff has sought for rejection of the applications.

4. Heard both side and also perused the materials on record.

5. By way of present applications, the defendant No.2 is seeking permission to produce

the certified copies of survey tippans and survey sketch issued by the ADLR Mudigere. The said documents are relating to the properties involved in the present suit. It is the case of defendant No.2 that the said documents are very much necessary to prove their case while the other side has contended that the recall of DW1 and production of additional document is to fill up omissions. If the nature of document sought for production is looked into, it cannot be held that the said documents are being produced for filling up omissions. It is well settled position of law that every opportunity has to be granted to the parties to the suit at the trial itself. Under the circumstances, this Court is of view to allow the present applications. Hence the following:

ORDER

I.A. No.VI to VIII filed by the defendant No.2 under section 151 of CPC, Order XVIII rule 17 and Order VIII rule 1A(3) r/w Section 151 of CPC, are hereby allowed.

Additional documents produced by the defendant No.2 is taken on record and the DW1 is recalled for further examination in chief by: 07.08.2024.

Sd/-

(Vishwanath A.)

Addl. Civil Judge & JMFC.,
Mudigere.