

ORDERS ON IA.NO.VIII

The present application is filed at the stage of further defendant evidence. The defendant No.1 has filed this application U/O 16 Rule 6 of CPC seeking for issuance of summons to the witness shown in the application.

2) The defendant No.1 has contended that the evidence of witnesses named in the application is very much necessary and they are stating that they will not appear before this Court otherwise than on summons. On these grounds the defendant No.1 has sought for allowing the application.

3) The learned counsel for plaintiff has filed the statement of objections contending that the application is made to drag the proceedings, the defendant has not made out good grounds in support of the application. The plaintiff has further contended that the defendant has already been examined and there would be no

chance to the plaintiff to cross-examine the defendant with respect to the relationship with the present witnesses. On these grounds the plaintiff has sought for rejection of the application.

4) Heard learned counsels for both side and perused the materials available on record.

5) This is the suit for declaration and permanent injunction with respect to the suit property. Record discloses that the defendant No.1 has been examined as DW1. When the matter is now posted for further defendant evidence, the present application came to be filed by the defendant No.1 seeking to issue witness summons to the witnesses as shown in the IA.

6) In support of his prayer, the defendant No.1 has filed an affidavit wherein stated that the witnesses are not agreeing to give evidence unless there are issued with the witness summons. On the other hand the learned counsel for plaintiff has attended that since the defendant No.1

is already examined, the plaintiff will have no opportunity to cross-examine the defendant No.1 with respect to the relationship between himself and the witnesses.

7) It is the settled position of law that both the parties of the suit shall file their list of documents and witnesses within 15 days from framing of issues whereas if the party makes out bonafide grounds for not filing such list, he may file the same at the later stage with the leave of Court. In the present case the present application is filed at the belated stage when the suit is posted for further defendant evidence. It is no doubt that the parties have right to examine any number of witnesses on their behalf in proof or disprove as the case may be. Whereas the non filing of list of witness should also not cause hardship to the other side. Herein the case on hand the defendant No.1 is intended to examine two witnesses on his behalf and the list of witnesses is filed at the belated stage. Therefore, keeping in view the position of law that the

technicalities should not defeat substantial justice, this Court is of consideration that the present application be allowed on payment of cost to the plaintiff for any hardship caused to him by the delay. Hence, the following:

ORDER

I.A.No.VIII is hereby allowed on cost of Rs.1,000/-.

Issue witness summons to the witnesses as shown in IA No.VIII requiring the witnesses to adduce their evidence in the above case.

For further defendant evidence by:
08.06.2023

Sd/-
Addl. & JMFC., Mudigere