

ORDERS ON I.A.NO.VI FILED BY THE
DEFENDANT

I.A.No.VI filed by the defendant U/o XVI rule 1(3) of CPC to issue summons to the witness stated in the application.

2. On the other hand, the plaintiff filed objection to IA No. VI by denying all the averments made in the memo of facts annexed to the application. Plaintiff prays to reject the application.

3. Heard both side and perused the materials on record.

4. The following points arises for my consideration.

1) Whether the defendant has made out grounds to allow IA No. VI?

2) What order?

5. Heard on IA No. VI by both side

6. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : As for the following:

REASONS

7. **Point No. 1:** It is submitted by the defendant that the above case is posted for leading further evidence of the defendant on the date for filing of the witness list of the defendant could not file the witness list due to inadvertence the defendant intends to examine persons detailed in the application on his side as witness, the said persons are fully aware of the facts of the case. It is further stated that defendant will be put to untold hardship and inconvenience if the application is not allowed. Hence defendant prays to allow the application.

8. On the other hand, plaintiff has filed objection to IA No.VI. In the objection the plaintiff stated that the application filed by the defendant is not maintainable either in law or on facts. The defendant has not filed the witness list before leading his side evidence which is mandatory under law. The application is highly belated one. The application filed to drag on the proceedings and defer justice to plaintiff. The defendant has not made any good grounds in support of his application and grounds alleged are false and untrue.

9. Even otherwise at the time of leading evidence of DW-1 when the Court has enquired whether the defendant is going to examine any witness on his side the defendant has not shown any willingness to examine any other witness hence the Court posted the case for cross examination of defendant. Hence, plaintiff prays to reject the application filed by the defendant.

10. On perusal of the records it reveals that, plaintiff has filed the suit for declaration that the plaintiff is owner of 'A' schedule property and for possession of plaint 'B' schedule property. When the matter is posted for further evidence of defendant he came up with present application for issue summons to the witness. It is the principle that widest opportunity should be given to the parties to prove his case in the trial court itself. If the IA No.VI is allowed no hardship will be caused to the plaintiff. The plaintiff have every right to cross-examine the witness. Therefore, to avoid multiplicity of proceedings I inclined to allow the application filed by the defendant. In view of my above discussion I answer point No.1 in the Affirmative.

11. **Point No. 2:** In view of my findings on point No.1 I proceed to pass the following:

ORDER

I.A.No.VI filed by the defendant U/o XVI rule 1(3) of CPC is hereby allowed on costs of Rs.200/-.

Issue summons to the witnesses if PF paid case posted for further evidence of defendant.

Call on : 05/09/2024

(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.