

**ORDERS ON IA.NO.VIII**

**1.** I.A.No.VIII has been filed by the Applicant/ Plaintiff under Section 151 of C.P.C with the prayer to summon the witness by name Sri. Srinivas S/o Subramanya, shown in his witness list.

**2.** In the affidavit appended to the application, it is stated that the Court permitted the Plaintiff to submit his list of witness on 20.07.2024; examining the witness shown therein is very much necessary; the witness sought to be summoned is a social activist and has informed the Plaintiff that he would depose before the Court only if summons is issued to him; hence, the summons requires to be issued to the witness, to meets the ends of justice.

**3.** The application is resisted by the Opponent/ Defendant by filing objections contending *inter alia* that the application is not maintainable in law or on facts and contains falsity; the application lack necessary reason to take out summons to the witness; the examination of such witness is not necessary to adjudicate the suit; the witness is not an officer and not at all related to the cause of action of the suit; the application at hand is belatedely filed without making out any grounds to issue summons to the witness; there are no *bonafides* in filing the application. Hence, the prayer for dismissal of the application with costs.

**4.** On filing of such objections, the Applicant/ Plaintiff has filed his additional affidavit wherein, it is contented that the witness sought to be summoned being a social activist had supported the Plaintiff against the illegalities of the Defendant; he has also seen the house situated in

the suit schedule property and also a resident of the vicinity and hence, his evidence becomes necessary for the purpose of corroboration in the suit.

**5.** Learned counsels on both sides have made their respective submissions.

**6.** Having heard and after perusal of materials placed on record, the sole point that would now arise for my consideration is as under -

***“Whether the Applicant/ Plaintiff has made out sufficient grounds to allow the application in I.A.No.VIII?”***

**7.** My answer to it is in the '**Affirmative**' for the following reasons -

**8.** The suit is one for the relief of bare injunction. This application is filed at the stage when the suit was set down for further evidence on the side of Plaintiff.

**9.** On perusal of the case records, though the Plaintiff had initially presented his list of witness, mentioning the name of witness now sought to be summoned, he has come up with the instant application with the prayer to issue summons to such witness. The instant application was initially filed without mentioning any reason requiring the want of issuance of summons to the said witness and the said *lacunae* was seriously attacked by the Defendant in resting the application. Now, the Plaintiff has filed his additional affidavit with clearly mentions the specific reason for the need for examining such witness being that he has supported the cause of the Plaintiff in resisting the illegalities of the Defendant and that he has witnessed the existence of house of the Plaintiff in the suit schedule property. The proposed witness is to speak of these case aspects.

**10.** Given the nature of the suit, these appear to be the core aspects which needs to be proved by the Plaintiff in order to succeed in the suit. The evidence of the witness sought to be summoned appears to be relevant and material to prove the case of the Plaintiff. When such being the case, in order to discharge the burden bestowed on the Plaintiff, it is necessary to summon witness mentioned in the application.

**11.** No prejudice would be caused to the Defendant if this application is allowed for the simple reason that the said witness can be very much cross-examined to negate the contention of the Plaintiff and impeach the credibility of such witness. On the other hand, if this application is rejected, the Plaintiff would be put to great hardship and injury and an opportunity to prove his contention will be deprived. With the aforesaid discussions, I answer the sole point that has arisen for my consideration in the '**Affirmative**' and I proceed to pass the following;

**ORDER**

I.A.No.VIII filed by the Applicant/ Plaintiff under Section 151 of C.P.C is hereby allowed.

Issue witness summons to Sri. Srinivas S/o Subramanya to his address morefully mentioned in the list of witness filed by the Plaintiff, if P.F paid.

R/by - 28.10.2024

Sd/-  
**C.J & J.M.F.C: Sringeri**