

COMMON ORDERS ON I.A NO.23 TO 25

The learned counsel for the defendant No.4 has filed these I.A's 8 Rule 1(A) of C.P.C., seeking permission to condone the delay in producing the documents, application U/Sec. 151 of CPC seeking reopen the case and permit to further evidence of DW.2 from the stage of argument and under order 18 Rule 17 C.P.C., seeking recall of DW.2 for marking the documents.

2. In support of these applications the GPA holder of the defendant No.4 has filed affidavits. In his affidavits he has stated that the case is posted for evidence of defendants and these are documents which are related to the said property of the defendants and the defendant No.4 and other defendants except defendant No.1 and is in exclusive ownership and possession of the said property and to substantiate this plea, the said document i.e., sale deeds, RTC's, E-Swathu of the aforesaid property is here with produced. Further in the written statement they have pleaded regarding the fact and there by the plaintiffs are aware regarding this document. Today produced in this case and thereby the delay of caused in producing the same which is bonafide. Hence,

the delay may kindly be condoned and he may be permitted to produced the said documents and recall the DW.2 for marking those documents. Hence, he prays to allow the applications.

3. On the other hand the learned counsel for the plaintiff has filed common objections by denying entire contentions taken by the defendants in the applications. Further contended that the contents of the applications filed by the defendants are false and incorrect. Further the affidavit does not disclose any valid or sufficient grounds for reopening or recalling the suit. Since the present suit was filed in the year 2019 and several adjournments were earlier granted for the plaintiff's arguments, the defendants had already filed applications for reopening and recall on earlier occasions. After completion of the trial filing the present applications once again without any justifiable cause is not maintainable in law. Despite being granted sufficient opportunities by this court, the defendants failed to produce any documents for nearly 5 years and did not file the same within the stipulated time. Further at this stage, when the matter has already been posted for arguments, filing an application seeking

permission to produce documents is not legally maintainable. The defendants have filed these applications with malafide intention, thereby wasting the valuable time of this court and causing unnecessary hardship to the plaintiff. With respect to IA No.23 to 25 filed by the defendants, although this court had granted sufficient opportunities earlier to produce documents, the defendants failed to do so. Even after seeking several adjournments for arguments, they have not assigned any valid or sufficient reasons in their affidavit explaining the delay in producing the documents. By filing these IA's at this belated stage, the defendants are repeatedly attempting to delay the proceedings, waste the valuable time of this court and harass the plaintiff without any justifiable cause. Further the documents sought to be produced by the defendants have already been filed by the plaintiffs and marked as exhibits. Hence, there is no necessity for the defendants to re-produce the same documents. Therefore, the interlocutory applications filed by the defendants are not maintainable in law. Hence, he prays to reject the applications with costs.

4. Heard and perused the material placed on record.

5. On perusal of the material placed on record and the argument submitted by both the counsels the following point that arise for my consideration:

1. Whether the defendant No.4 has made grounds to allow the IA No.23 to 25?

6. My answer to the above point is in the “**affirmative**” for the following:

:REASONS:

7. The plaintiffs have filed the present suit for the relief of partition and separate possession, declaration and such other reliefs. Now the case is posted argument. In the meantime the defendant No.4 has come up with these applications seeking re-open the side of the defendants and permit them to marking the documents as produced along with the applications. The plaintiffs have denied that the documents now going to be produced by the defendant No.4 are created and fabricated and not related to this case. Further the documents sought to be produced by the defendants have already been filed by the plaintiffs and marked as exhibits.

8. On perusal of the record it reveals that in this case sufficient opportunity has been given to the defendants, but inspite of availing opportunity they have not produced any documents at the earlier point of time. When the case is posted for the argument, in the meantime the defendant No.4 rushed to the court and filed list of documents and by way of filing present applications and sought for re-open evidence on the side of the defendants and permit them lead further evidence as per list of documents furnished by them. Taking into consideration of facts and circumstances of the case and all the materials placed on record this court considers that in order to determine the matter in issue and in the interest of justice, an opportunity should be given to the defendants to file the documents. The plaintiffs will have every right to cross-examine the witness as to the genuineness of the documents. The defendant No.4 cannot be prevented from producing documents and marking the same only on the ground that the said documents are created and fabricated and the documents sought to be produced by the defendants have already been filed by the plaintiff and marked as exhibits.

9. On further perusal of the records, it reveals that the valuable right of the parties is involved in the present suit, every opportunity has to be given to the parties to put forth their defence prior to delivering the judgment. It is the fact that the defendants have approached this court at the belated stage, hence for the same is to be penalized by imposing suitable costs. If the opportunity is given to the defendants to lead his evidence as per list of documents, the plaintiffs have got every opportunity to cross-examine DW.2 on those documents. If applications are allowed, no harm or prejudice will be caused to the plaintiffs. Hence, in order to decide the real controversy between the parties and avoid multiplicity of litigation, this court is of the considered opinion that the defendants has to be given one more opportunity to lead their evidence. It is made clear that no further opportunity is given to the defendants and case will be proceeded further. With these observations, I answer point under consideration in the affirmative and I proceed to pass following:

:ORDER:

I.A.No.23 to 25 filed by the counsel for the defendant No.4 are hereby allowed

O.S No.30/2019

on cost of Rs.1,200/- altogether and
thereby re-open the side of the defendants
evidence and permitted DW.2 lead further
chief as per list of documents finally as last
chance.

Sd/-

**Sr. Civil Judge & J.M.F.C
Channagiri**