

ORDERS ON I.A.NO.XX

The defendants No.1 and 2 have filed this I.A.No.XX under Sec.151 of CPC to condone the delay in filing witnesses list and to permit the defendant to examine following witnesses:

- 1. Dinakara Alva,
S/o K. Kanthappa Alva,
R/at School Road, Vittal
Kasaba Village, Bantwal Taluk.**
- 2. V. Ravishankar
Advocate/document writer,
Kalembi, Vittal.**
- 3. Theertha Raj
S/o V. Muniraju Naidu
R/at No.34, Annipura Main Road,
3rd Stage, Sudama Nagar,
Bangalore-27.**

2. The defendant No.2 has sworn to an affidavit wherein he has stated that the proposed witness No.1 and 2 are the witnesses and scribe of registered Will dated 16-11-2007 executed by his father by name 'Narayana Padiyar' and witness No.3 is the person who has taken hand loan of sum of Rs.5,00,000/- from him for the construction of 'Laxmi Narayana' Complex and for that reason the examination of above witnesses is essential to prove his case and due to oversight he could not file witnesses list at earlier stage.

3. On the other hand the plaintiffs have filed common objection submitting that the witness No.1 and 2 cited in the application have not signed the Will alleged to be executed by 'Narayana Padiyar' and for that reason they are not relevant witnesses and for that reason the Will itself is

O.S./74/2019

created and forged documents and also witness No.3 is unknown person to the suit and same is set up by the defendants and for that reason submits to dismiss the I.A.No.XX.

4. Heard and perused.

5. The plaintiffs have filed this suit for relief of partition and separate possession and same is contested by defendants by filing written statement and now case is posted for defence evidence and at this stage the defendants have filed I.A.No.XX to examine witnesses who are attesting witnesses and scribe to the Will and also another witness to whom the defendant No.2 has lent hand loan of Rs.5,00,000/- and on perusal of issues framed by this court same goes to show that Issue No.3 is framed casting the burden on the defendants to prove Will and Issue No.4 is framed casting the burden on the defendants to prove availing of loan for construction of building and for that reason examination of witnesses is very essential and regarding the objection of plaintiffs that Will is created and witnesses are set up by the defendants cannot be decided at this stage and same can be decided only after trial and for that reason I.A.No.XX deserves to be allowed and accordingly I proceed to pass the following:

ORDER

I.A.No.XX filed by the defendants No.1 and 2 under Sec.151 of CPC is hereby allowed.

The delay in furnishing witnesses is hereby condoned and witnesses taken on record

O.S./74/2019

and the defendant is permitted
to lead further evidence.

No order as to costs.

**Senior Civil Judge & JMFC.,
Bantwal, D.K.**