

OS 36 -2021

Case called out.

Both parties absent.

No representation from either side.

**Orders passed on the IA no.6 filed by the plaintiff
under Order 16 Rule 1 and 2 r/w Sec.151 of CPC**

The present IA has been filed by the counsel for the plaintiff and prays to permit the plaintiff to lead the evidence of the witness as mentioned in the IA.

2. In support of the IA, plaintiff no. 6 filed affidavit and stated that the witness mentioned in the IA is his relative and he is well acquainted with his family genealogy as such in order to prove his case, it is essential to lead the evidence of the said witness. It is stated that if the IA is allowed no hardship or injustice is going to be caused to the defendants. Further stated that if the IA is rejected plaintiffs are going to put to loss and injury. Hence prays to allow the IA.

3. Counsel for the defendants filed objections to the IA and stated that plaintiff did not produced genealogy before the court as such proving the genealogy does not arise. Further stated that genealogy has to be produced from proper Government authority and it can not be stated through any witness as such there is no relevancy to summon the proposed witness. Hence prays to dismiss the IA with cost.

4. Perused the IA, objections and rest of the material particulars available on record. Below mentioned points arisen for my consideration.

POINTS

1) Whether the plaintiff made out grounds to consider IA no.6 filed under Order 16 Rule 1 and 2 r/w Sec.151 of CPC and grant the relief as prayed for ?

2) What order ?

5. Heard counsel for the plaintiffs and the defendants and the IA. Perused the material particulars available on record. My findings to the above points is as hereunder.

Point no.1 : In the Affirmative.

Point No.2: As per the final order
for the following.,

REASONS

6. **Point No.1:** When the matter posted for further evidence of plaintiff side the present IA has been filed by the counsel for the plaintiff and prays to permit the plaintiffs to examine the witness as mentioned in the IA to prove the genealogy.

7. Counsel for the defendants argued that plaintiffs have not produced genealogy from the authenticated Government Authority, as such proving of genealogy does not arise. Further argued that the family genealogy can not be proved any witness, as such there is no bonafide in the application filed by the plaintiffs hence prays to dismiss the IA with cost.

8. Heard counsel for both parties. Perused the material particulars available on record. Admittedly suit has been filed seeking to declare that the plaintiffs together are entitled for partition and separate possession of half share of led Shri. Angara @ Kaliya in the plaint B

schedule property against the defendant. In the plaint A schedule property has been mentioned and it contains regarding the genealogy of one Itha and his family members. The defendant no.3 in his written statement taken a stand the plaintiffs are not legal representatives of the deceased Itha. This court has also framed issue no.1 and burden lies on the plaintiffs to prove that they are the legal heirs of Itha as per the genealogical tree mentioned in the plaint A schedule. It is argument addressed by the counsel for the plaintiff that the witness who is mentioned in the IA is competent person to give evidence with regarding to relationship of the parties as mentioned in the genealogy in plaint A schedule, as such this court opines that opportunity has to be granted to the plaintiffs to prove issue no.1 by adducing evidence in their side either it is oral or documentary. Opportunity is with the defendants to discredit the veracity of the witness in the cross examination, as such no hardship or injustice is going to be caused to the defendants if the IA is allowed and the plaintiff permitted to adduce the evidence of the witness as mentioned in the IA. With all these discussions I proceed to answer point No.1 in the Affirmative.

9. Point no.2: For the reasons as discussed above in point no.1 which resulted in affirmative, I proceed to pass the following.

ORDER

IA no.6 filed by the counsel for the plaintiffs under Order 16 Rule 1 and 2 r/w Sec.151 of CPC is hereby allowed on cost of Rs.100/-.

Plaintiffs are permitted to lead the evidence of the witness as mentioned in the IA.

Issue summons to the witness as mentioned in the IA 6 if PF paid.
R/by :20-07-2026.

**(Devaraj Y. H.)
I ASCJ &JMFC
PUTTUR**