

ORDER ON I.A.NO.15

The present application is filed by the defendant no.5 under Order VIII Rule 3(A) R/w Section 151 of CPC with prayer to permit to produce the documents as per list.

2. The counsel for plaintiff has filed the objection to the present application.

3. Heard the learned counsel for defendants and also learned counsel for plaintiff and perused the materials on record.

4. The following points that would arise for consideration by this Court:

1. Whether defendant no.5 has made out the grounds to permit for production of documents as sought under present application?

2. What order?

5. The answer to the aforesaid points are as below:

Point No.1 : In the Affirmative

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

REASONS

6. Point No.1: The present suit is for relief of mandatory injunction by directing the defendants to hand over the vacant possession of suit property to the plaintiff. The matter is of 2015, whereas the defendant no.5 has already examined himself as DW1 and when the matter is pending for further examination-in-chief of DW1, at this stage, the defendant no.5 has come up with a present application by seeking permission to produce the documents as per the list annexed.

7. It is pertinent to note that the plaintiff has filed the objection to the present application by contending that the application is not maintainable either on law or on facts, and the matter being 2015, already sufficient opportunities were given to the defendant no.5 at the

appropriate stage. But the present application is filed at billeted stage without any proper explanation.

8. Further it is contented by plaintiff that the documents at serial no.2 to 9 are the only xerox copies and not original documents and even there is no foundation has been laid down in the affidavit for leading the secondary evidence and no explanation has been given with respect to loss or destruction, non-availability of original documents. Hence, said documents cannot be marked in the evidence. The mere production of photocopies does not confer any evidentiary values, and even defendant no.5 has not disclosed as to from whose custody said originals were there. Except the Document No.1, all other documents from Serial No.2 to 9 are not public documents as required under Section 74 of B.S.A.

9. It is to be noted that the plaintiff is seeking permission to produce the documents on the ground that the said documents are necessary to prove the defence, being as said documents are public documents and he would suffer if he is not permitted to produce the documents.

10. It is significant to note that, on going through documents intended to be produced by the defendant

no.5, it is evident that the documents which are to be produced are letters of Karnataka State Law University from the serial no.2 and 3. Whereas other documents are pertaining to the bill issued by the one S. R. Rahul, Civil Contractor. Even the other documents, though it appears having signature of the engineer, and other documents are pertaining to the electricity bill and also photographs which are intended to be produced by the defendant no.5.

11. It is relevant to note that the validity of the documents cannot be determined at the time of adjudication of application which was filed for seeking permission to produce the documents. But the said documents have to be appreciated during course of passing the judgment and the contention taken by the plaintiff would not be having any substantial grounds to reject the application of defendant No.5. Furthermore even if defendant No.5 is permitted to produce the documents then the plaintiff is having every right to cross examine on the said documents to the DW1. Therefore at this stage the plaintiff has not made out a grounds to reject the present application. Thus in view of aforesaid discussion this Court answered **Point No.1 is in the Affirmative.**

12. Point No.2: For the forgoing reasons, discussion and finding on point no.1, this Court proceeds to pass following order.

ORDER

The application IA No.15 filed by the defendant no.5 U/O VIII Rule 3(A) R/w Section 151 of CPC is hereby allowed and defendant No.5 is permitted to produce the documents subject to admissibility in the evidence.

For further chief of DW1.

Call on 09.03.2026.

(Avinash M. Ghali)
Prl., Civil Judge & JMFC.,
Dharwad.