

ORDERS ON I.A NO.XIV FILED U/O VIII RULE
1A R/W SEC.151 OF CPC

The counsel for defendant No.1 has filed above said application seeking leave to produce the list with documents.

2. The plaintiffs have filed objections to the I.A.No.14.

3. Heard arguments.

4. The points for consideration are:

1. Whether the list with documents can be received by granting leave?

2. What order ?

5. The above point No.1 is answered in the Affirmative, and point No.2 as per final order, for the following:

REASONS

6. **Point No.1:** Basically this suit is filed by the plaintiffs against the defendants for the relief of partition and separate possession, declaration and permanent injunction in respect of the suit schedule properties. When the suit has been set down for cross examination of P.W.1, the counsel for defendant No.1 came up with this application seeking the above said relief.

7. In the annexed affidavit the defendant No.1 averred that, earlier hearing defendant No.1 have produced the xerox copies of the documents and some of the documents are recently traced out. Hence, she is producing the documents as per the list of documents. The production of said documents is very much necessary to substantiate her claim in this suit. It is further submitted that she could not produce the said documents at the earlier stage of this suit in spite of exercise of due diligence by her. Hence, she filed this application and prayed to allow the application.

8. The objections of the plaintiffs is that the documents which are sought to be produced are all xerox copies of the documents, none of them either

certified or original or even attested, hence, they were in the custody of the defendants earlier itself, hence, the application now filed is not sustainable in the eye of law and the said documents are not at all related to subject matter involved in this suit and nothing has been elucidated in the affidavit as to their importance. No explanation for the late producing frivolous and if the said documents which are sought to be produced are attested copies and they are not authenticated nor having any authenticity to consider those documents in evidence. No reason or any explanation is forthcoming so as to seek delayed production of documents. If the application is considered, it will result in multiplicity of proceedings. Therefore, the documents are not to be permitted to be produced and prayed to dismiss the application.

9. On perusal of the entire materials available on record it is noticed to the Court that this is the suit filed by the plaintiffs against the defendants for the relief of declaration. Admittedly, the matter is in the stage of cross of P.W.1. In such circumstances, if the application is allowed is no hardship would be caused to otherside except delay. In this regard I would like to refer decision reported in 1994 SCC (4) 659 (Billa Jagan Mohan

Reddy vs Billa Sanjeeva Reddy) it is observed as follows:

It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 4 1, Rule 27 CPC the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in the controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents.

*Therefore, when the very document is pivotal document in this suit, in the opinion of this Court there is no reason why the said document should not be received. It would be a futile exercise if the trial is conducted without receiving the document. Therefore, subject to proof, relevancy and admissibility the document can be received. Hence, **point No.1 is answered in the affirmative.***

10. **Point No.2:** *In view of findings on point No.1, this court proceeds to pass the following:*

ORDER

The I.A. No.XIV filed by the defendant No.1 under Order VIII Rule

*1A R/w section 151 of CPC is hereby
allowed.*

sd/-

*I Addl. Senior Civil Judge and JMFC.,
Hubballi.*