

ORDERS ON I.A NO.XXVI FILED U/O VIII

RULE 1(3) OF CPC

The counsel for defendants have filed above said application seeking leave to produce the list with documents.

2. *The plaintiff has filed objections to the I.A.No.26.*

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 plaintiff for the relief of partition and separate possession against the defendants in respect of the suit properties. When the suit has been set down for further chief of P.W.1, the counsel for defendants came up with this application seeking the above said relief.*

7. *In the annexed affidavit the defendant No.7 averred that, the defendants have intending to produce certified copy of the sale deed, tax payment receipt etc., which are very important to substantiate their case. Hence, the production of the above said documents are very important. There is no any intentional delay in producing the*

above said documents. The defendant No.7 has material fact to be brought on record by producing the above said documents. Hence, it is just and necessary to accord permission for him to produce the above said documents, as otherwise he will be put to much loss and injustice which cannot be compensated in terms of money. On the contrary no loss or prejudice would be caused to the plaintiff.

8. The objections of the plaintiff is that the application is neither tenable in law nor on facts. The same deserves to be dismissed. The defendant filed his written statement and no base is laid for the documents intended to be produced through the application under reply. No reason is forthcoming in the affidavit for non production of the documents earlier in the suit by applicant. No reason is stated for justifying non production earlier. There is no bonafide in the application. Mere intention of the applicant to produce documents is not sufficient to allow the application. No hardship whatsoever would be caused to applicant if the application is dismissed; to the contrary, irreparable loss and injury would be caused to plaintiff if the application is allowed.

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 partition and separate possession. Admittedly, the matter is in the stage of further chief 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.XXVI filed by the defendants under Order VIII Rule 1(3) of CPC is hereby allowed on payment of cost of Rs.200/-.

For plaintiff arguments.

Call on 17.11.2025.

sd/-

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