

**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC.,
ARASIKERE.**

O.S.No.36/2009

PRESENT: SRI.AMARANATHA B.N.

B.A. LL.B

Prl.Civil Judge & JMFC

Arasikere.

DATED ON THIS THE 23rd DAY OF FEBRUARY, 2024

PLAINTIFFS: The Secretary,
Milk Producers Society

// Versus //

DEFENDANTS: Sri.K.C.Basappa and others

RANK OF THE PARTIES IN NO.X and XI

APPLICANTS/ PLAINTIFF : Milk Producers Association

V/s

OPPONENTS/ DEFENDANTS : Sri.K.C.Basappa and others

i.	Provision under which the application is filed	Under section 151 of CPC and Under Order XVI Rule 1 and 2 of CPC
ii	Relief sought for	Reopen the case for plaintiff evidence and production of witness list
iii	The date on which the application is filed	20.12.2023
iv	Number of the application	X and XI

v	The date on which the order objections are filed by different opponents	03.01.2024
vi	The date on which the order were passed on the said applications	23.02.2024
vii	Stage of the suit	Defendant evidence

COMMON ORDERS ON I.A.No.X and XI

1. The plaintiffs have filed these applications one under section 151 of CPC with a prayer to reopen the above case for plaintiff evidence and another application under order XVI Rule 1 and 2 of CPC with a prayer to permit the plaintiffs to furnish the list of witnesses.

2. The plaintiff No.1 in the affidavits filed in support of the application stated that in the present case the plaintiff evidence is closed but they have to examine the members of the plaintiff Milk Producers Society as they are the members of the plaintiff Milk Producers Society from beginning who will depose with regard to existence of plaintiff Milk Producers Society as they are the members of the plaintiff Milk Producers Society from beginning. Hence if the applications are allowed and they are permitted to furnish the list of witnesses and to lead further

evidence by reopening the above case for plaintiff evidence no hardship or injustice would be caused to the other side. On the other hand if the applications rejected then the rights of the plaintiff Milk Producers Society will be seriously affected which cannot compensated at all, by stating so filed this applications.

3. Upon receipt of the application the defendant No.1 objected the same by way of filing statement of objections. The defendant No.1 in the statement of objection contended that the applications filed by the plaintiff Milk Producers Society are not maintainable and liable to be dismissed. Further contended that in the present case the plaintiffs have already examined 4 witnesses and produced the documents in support of their case, even though the plaintiffs with sole intention to drag on the proceedings and to fill up the lacuna in the evidence of the plaintiff witness filed these applications after completion of the plaintiff evidence. Further contended that the Secretary of the plaintiff Milk Producers Society in the affidavit in support of the application stated that witnesses are the members of the Sanga since from the beginning and they are intending to depose with regard to existence of the Milk Producers Society. In that regard the

plaintiff has already examined the witnesses. Hence the plaintiffs with sole intention to drag on the proceedings and to trouble and harass the defendant No.1 filed these applications without assigning valid reasons as to why they have not examined at relevant point of time by furnishing the list of witnesses in the earlier application. Hence the applications filed by the plaintiffs are liable to be rejected, by stating so prays to reject the application.

4. Heard Sri.NSS. advocate for plaintiff and Sri.HSM advocate for defendant on IA.No.X and XI.
5. Perused the materials on record, upon perusing the materials on record the following points arises for my consideration:-

POINTS

1. Whether the plaintiffs have made out the sufficient grounds to furnish the list of witnesses by reopening the above case for plaintiff evidence and to lead further evidence of plaintiffs as prayed in the application?
 2. What order?
6. Upon on hearing the arguments and on perusal of the materials on record my answer to the above points is as under:-

Point No.I: In the Negative

Point No.II: As per final order
For the following:

::REASONS::

7. **POINT No.1:** The plaintiffs have filed this suit for the reliefs of declaration and permanent injunction with a prayer to declare that the judgment passed in O.S.No.175/2004 is void and the plaintiffs are the owners and in possession of the suit schedule property and to restrain the defendants from interfering with the possession of the plaintiffs over the suit schedule property.
8. The plaintiffs in the plaint presented by them contended that the plaintiffs are the Secretary and President of the Milk Producers Society of Javagal and they have filed the suit to protect the property of the Milk Producers Society. Further contended that the suit schedule property was the property of Grama panchayath, same was granted in favour of the Milk Producers Society of Javagal and they have erected temporary shed in an area measuring East-west 30 feet, north-south 40 feet and running a Milk Producers Society therein. Accordingly since 1990 the plaintiff's Milk Producers Society is running in the suit schedule property and they have not sold the same. The defendants behind

the back of the plaintiffs created the documents and trying to interfere with the peaceful possession and enjoyment of the Milk Producers Society in the suit schedule property. Further contended that the defendant No.1 beyond the back of the plaintiff's Milk Producers Society filed a suit in O.S.No.175/2004 against the J.K.Siddegowda and J.C.Thimmegowda for the relief of injunction, said suit came to be decreed. Thereafter they have demolished the building and damaged the war chat erected by the plaintiff Milk Producers Society, by stating so filed this suit.

9. Upon service of summons the defendant No.1 appeared and contested the suit by filing written statement by contending that the suit of the plaintiff is not maintainable as per law as they have filed the suit without taking permission from the District Milk Producers Society. Further contended that the suit filed by the defendant No.1 as per O.S.No.175/2004 for the relief of injunction came to be decreed and the plaintiffs have preferred an appeal against the judgment passed in O.S.No.175/2004, same is pending for consideration. During the pendency of the appeal the plaintiffs have filed this suit. Hence the suit of the plaintiffs is not maintainable and liable to be dismissed and denied the

allegations made against the defendant No.1. Further contended that the suit schedule property was the property of the Javagal Grama panchayath and same was granted to defendant No.1 on 24.05.1993 under Ashraya Scheme and the Tahasildar has issued Hakku pathra and he is in possession of the same. The plaintiffs with sole intention to trouble and harass the defendant No.1 filed this false suit, by stating so prays to dismiss the suit.

10. Based on the pleadings this Court on 25.05.2009 framed the issues. Thereafter the plaintiff examined two witnesses and produced the documents which are marked as per Ex.P1 to Ex.P26. Thereafter the defendant No.1 has examined 6 witnesses and produced the documents which are marked as per Ex.D.1 to Ex.D16, based on the evidence adduced by the parties and upon hearing both the parties this Court by its judgment dated 13.02.2017 dismissed the suit of the plaintiffs. The plaintiffs being aggrieved with the judgment preferred appeal before the Hon'ble Senior Civil Judge, Arasikere as per R.A.No.14/2017, said appeal came to be allowed and remanded the matter with a direction to consider the documentary evidence produced by the

plaintiffs and defendants and to give an opportunity to the parties to lead evidence. Accordingly this matter taken on board.

11. It is relevant to note that after remanding the matter the plaintiffs have filed an application to implead the defendant No.2 to 4, said application came to be allowed. Thereafter the plaintiffs have examined two witnesses as PW3 and PW4. After completion of the evidence of PW3 and PW4 this case is posted for defendant evidence as there is no list of witnesses furnished by the plaintiffs to examine on behalf of the plaintiffs.
12. Further it is relevant to note that the plaintiffs by virtue of filing these applications intending to examine the witnesses mentioned in the list of witnesses to depose with regard to existence of the plaintiff Milk Producers Society. On perusal of the materials on record it is clear that there is no dispute between the parties with regard to existence of the plaintiff Milk Producers Society. Hence again examining the two more witnesses to depose with regard to existence of the plaintiff Milk Producers Society is not necessary. Further the plaintiff Milk Producers Society have filed this suit in respect of the suit schedule property based on the grant. Hence

examination of the witnesses to depose with regard to existence of the Milk Producers Society is not necessary.

13. Further it is relevant to note that the plaintiff No.1 in the affidavit filed in support of the applications not stated as to why they were not mentioned the names of said witnesses in the earlier application and also they have not assigned any valid reasons to reopen the above case for plaintiff evidence. Further it is relevant to note that in the present case the plaintiffs have filed this suit after completion of cross-examination of PW1 to PW4. Hence it goes to show that the plaintiffs have filed these applications to fill up the lacuna in the evidence of PW1 to PW4, same is not permissible under law. Hence applications filed by the plaintiffs are liable to be rejected.
14. Upon perusing the materials on record and in view of reasons stated above this court is of the opinion that the plaintiffs have not made out sufficient grounds to permit the plaintiff to furnish the list of witnesses and to lead further evidence of plaintiff by reopening the above case for plaintiff evidence. **Hence, I answer Point no.1 in the Negative.**

15. **POINT No.2** :- In view of the finding on Point no.1, I proceed to pass the following ;

ORDER

I.A.No.X and XI filed by plaintiff under section 151 of CPC and under Order XVI Rule 1 and 2 of CPC are hereby rejected.

(Dictated to the stenographer, computerized by her, corrected by me and then pronounced in the open court today on this the 23rd day of February 2024.)

(AMARANATHA B.N.)

Prl. Civil Judge & JMFC
Arasikere.