

## **ORDER ON IA No. 32 to 35**

The counsel for defendant No.3 and 4 filed IA 32 U/s 151 of CPC to reopen the case of defendants to produce additional documents and to lead further evidence.

2) Also has filed IA-33 U/o 18 rule 17 R/w 151 of CPC seeking recalling of DW1 for the purpose of marking of the additional documents produced.

3) Also has filed IA 34 and 35 U/o 8 rule 1A R/w 151 of CPC seeking permission to produce documents by condoning the delay.

4) The GPA holder of defendant No.3 has sworn to the affidavit annexed to all the above said applications. In the affidavit it is stated that it was not possible for the defendants to produce the documents well in time for its non availability. It is also stated that he is ignorant of law and was not able to meet his counsel and get the additional documents marked. Therefore has sought permission to produce documents and also to recall DW1 for marking of additional documents.

5) The counsel for the plaintiff has filed objections to all the above said applications. Similar objections have been filed to all the applications by contending that since the witnesses of the defendants have admitted certain photographs showing the possession and enjoyment of the plaintiff over the suit schedule property, as counter to the admission given by the witnesses some photographs which have been taken illegally in the suit schedule property during the absence of the plaintiff have been sought to be produced. Complaint is also lodged before the jurisdictional police with respect to the defendants excesses. If the said documents are allowed to be produced and

marked in the suit, the plaintiff suffers irreparable loss and injury and takes away admissions given by witnesses of the defendant. Hence has prayed to reject all the application.

6) Heard arguments of both counsels and perused materials on record.

7) The points that arise for my consideration are:

- 1. Whether the defendant No.3 has made out grounds for production of documents has sought in IA 34 and 35.***
- 2. Whether the defendant No.3 has made out ground to recalled DW1 for further examination.***
- 3. Whether the defendant No.3 has made out grounds to reopen his case to lead further evidence.***

8) My findings to the above points are as follows:

Point No.1 to 3 : in affirmative

Point No.4 :as per final order

for the following reasons

#### **-:REASONS:-**

9) The defendant No.3 through his GPA holder(his son) has sought to produced additional documents as sought in IA 34 and 35. Under the said application the documents sought to produced are some electricity bills, photographs, receipts of photographs and CD pertaining to the said photographs. It is contended that the said documents were not available to produced them before court well in time. It is also stated that due to ignorance of law, the said documents were not produced well in time.

10) The present suit is filed by the plaintiff seeking declaration of her title over

the suit schedule property bearing Sy No. 106(old Sy No. 60/11) of K.Kalenahalli village, Kasaba hobli, Channarayapatna Taluk. It is also sought to declare that the decree in OS No. 126/1990 obtained by the defendant No.3 Javaregowda is not binding on her. Also has sought for consequential relief of injunction against the defendants. With all this prayers the plaintiff also sought an alternative relief that if the court come to the conclusion that the plaintiff is not in possession of the suit schedule property, has sought delivery of possession of the suit schedule property. On the contrary the defendants 3 and 4 also claims title and possession over the said suit property.

11) The documents to be produced are stated to be the photographs of suit schedule property and electricity bills of the Year 2005 which are relevant in adjudicating the matter. The contention of the plaintiff is that they have been taken by the defendants illegally during her absence. The said contention is the defence of the plaintiff which may be countered during cross examination. If the photographs have been illegally taken in the absence of the plaintiff, the plaintiff will be provided with an opportunity to counter the same during cross examination. Since there is serious dispute of title and possession over the suit schedule property, it would be proper to allow the defendants to produced said the documents which may help in adjudicating the dispute between the parties. Further more the stage of proceedings is still set for further evidence of defendants. At this juncture DW1 is sought to be recalled. On the perusal of the deposition of DW1 and the order sheet, the cross examination of DW1 has been taken as “not tendered for cross examination for the reason that he was present during the morning session and remained absent during the afternoon session on 25.09.2019”. Therefore recalling of DW1 will also provide an opportunity to the plaintiff to cross examine him to full extent. However there is a delay in production of the documents which in my opinion could be compensated by imposing cost.

Under the circumstances the defendants No.3 has made out grounds to allow the above said applications. Accordingly I hold point No. 1 to 3 in affirmative.

Point No.4 in view of discussion made while discussing the above points, I proceed to pass the following order:

**ORDER**

***IA 32 to 35 are hereby allowed on cost of  
Rs.1,000/-. DW1 is recalled for his further  
evidence.***

***Returnable by***

***Senior Civil Judge and JMFC.,  
Channarayapatna***