

**IN THE COURT OF CIVIL JUDGE AND JMFC  
AT HOLENARASIPURA**

Present:- Sri.R.Mahesha, B.A.L, LL.B,  
Civil Judge and J.M.F.C,  
Holenarasipura.

Dated this the 15<sup>th</sup> day of March, 2019

**O.S.No.134/2008**

Smt.Rani and others : Plaintiffs

**(By Sri.B.N.R., Adv.,)**

V/s

Chikkamallamma & others : Defendants

**(D1 & 2 By Sri.P.D.D. Adv.,  
D3, 6, 8 to 11 by Sri.H.S.A. Adv.,  
D4 by Sri.J.N.Adv., D5 - exparte  
D12 by Sri.R.S. Adv.  
D13 to 15 by Sri.K.S.S.Adv.,)**

**COMMON ORDERS ON IA NO.43 TO 45**

The plaintiff have filed present applications U/o 18 Rule 17 of CPC and Section 151 of CPC praying to reopen the case and recall of PW.1 for further examination and U/o 7 Rule 14(3) of CPC for seeking permission to production of documents.

2. In the annexed affidavit, the plaintiff had sworn that, the suit filed for partition and separate possession in respect of joint family properties. The present case set down for argument. While preparation for canvassing the plaintiff side argument, she secured some documents pertaining to this suit and also some documents involved in OS No.199/2010 which is pending between the present plaintiff and defendant No.12. Hence she intends to produce the same before the court

and marked as exhibits. The said documents are very much necessary. Hence she preferred the present applications and prays for allow the applications.

3. The defendant No.3 and 5 to 11 filed objection to the said application. In the objection contending that the application is not maintainable either in law or on facts of the case. The document produced by the plaintiff is already filed. The said document is unregistered document. The plaintiff not stated proper reason for delay in production of the document dated 26/05/1991 and not stated why is not produced at earlier stage. The plaintiff is suppressing the facts pending in between the plaintiff and defendant No.12 in OS No.199/2010. The reasons stated in the annexed affidavit for production of document is not satisfactory. The plaintiff now intends to produce the document, but she did not stated why she sent huge time to produce the same. Now case set down for arguments, at this stage the present application preferred only to drag the proceedings. Hence prays for dismissal with exemplary cost.

4. Heard argument from both sides. Perused the records.

5. The points that would arise for my consideration are as follows.

**1. Whether the plaintiffs have been made out sufficient grounds to consider the IA No.43 to 45?**

**2. What order?**

6. My answer the above points are as follows.

**Point No.1:-** In the Negative

**Point No.2:-** As per the final orders  
for the following reasons.

### **REASONS**

7. **Point No.1:-** Perused entire case papers, it discloses that the present suit filed for the relief of partition and other consequential relief in respect of suit properties against the defendants in the year 2008. After appearance of opponents/defendants and after completion of pleadings, this court framed issues on 7/09/2010. After get 4 adjournments plaintiff filed examination in chief and examined as PW.1. Meantime some interim applications filed, after considering other side objections and arguments interim applications disposed off and again case posted for cross of PW.1. Despite provide sufficient time, PW.1 remained absent before the court, therefore on 19/10/2011 this court passed an order as "**PW1 present, advocate for the plaintiff absent, hence evidence of PW.1 is discarded, suit dismissed for non prosecution**". Again this case restored as per order passed in Mis.No.7/2011 on 13/01/2014. Again plaintiff took proper steps to get appearance of defendants. Again case posted for cross of PW.1, after get appearance of other defendants. Meantime several applications filed, same are disposed off. Plaintiff took sufficient time to complete plaintiff side evidence. Plaintiff side entire evidence closed. On 20/07/2017 and case posted for defendant side evidence. The defendants also took several adjournments to led defendants side evidence. On 30/08/2017 defendant No.3, 6 to 11 advocate filed application U/o 8 Rule 1(a) of CPC to production of some document. Plaintiff counsel filed his objections to that IA. After heard both side, this court passed detailed order on IA No.23 (U/o 8 Rule 1(a) of CPC) and registered partition deed dated 21/02/2009 taken on record subject to proof and relevancy documents also marked through DW.1 as Ex.D3 to 9 on 23/10/2017. Plaintiff counsel lengthy cross examined on 09/11/2017 and 30/11/2017. On careful perusal of cross examination portions of plaintiff side, he did not ask any questions regarding Ex.D3.

Plaintiff actively participated in further proceedings of the case. The present applications filed on 13/12/2018 to amend plaintiff prayer column and seeking recall of DW.1 to cross examine on Ex.D3. The said application came to be rejected on 21/02/2018. Thereafter the plaintiff filed one more application to discharge the Plaintiff No.2 as she is attain majority, the same is allowed and case set down for necessary amendment. After filing amendment plaint, the case posted for its original stage argument. When the case posted for argument, the plaintiff counsel filed these applications to recall of PW.1 and production of documents. The acts of the plaintiff definitely cause injury to opponent as well as court. If plaintiff has good case, she can canvass his argument. But she intentionally filed mischievous applications.

8. On careful perusal of the documents now sought to produce before the court that one unregistered affidavit, hand written particulars, written on 10/- Rupees stamp paper before Munisiff and JMFC, Holenarasipura on 12/07/1991. Another document is revenue officer order dated 26/05/1991. Two computerized RTC of Sy.No.34/2 of Mavinakere Village, and Sy.No.42/09 of Kamasamudra Village for the year 2018-19. On 07/03/2019 obtained one more document is certified certificate issued by secretary Kattebelaguli Grama Panchayath on 08/03/2019. The above two documents have been in possession of plaintiff since 1991. But they have did not produce the same before this court since 2008 till 2019. Another 3 documents recently on 07/03/2019 and 08/03/2019 get from authority. But the plaintiffs have not explained in what circumstances to prevented them to produce earlier appropriate stage. It is know to general public that in the year 2015 on wards Government Created new post to panchayath as "**Panchayath Development officer**". Now he is head of panchayath. He is only person to issue any certificate concern his panchayath limit. The secretary now collect tax and do other works as

per the direction of PDO. The above document No.4 now issued only secretary of Gram Panchayath, Kattebelaguli on 08/03/2019. Now after amendment in Karanataka panchyath Raj Act, all properties of panchayath are digitalized and now "E"- property khatha extract issued with exact measurement. Therefore such document is also doubtful. Moreover they filed this application in order to over come, in consistency lacuna in the plaint, pleadings and evidence. It is not the case of plaintiff that, it was not given adequate opportunity, in fact the materials placed show that the plaintiffs have filed these applications, after more than sufficient opportunity had been granted to prove their case. During the entire trial, those documents have remained in the exclusive possession of the plaintiff. Still plaintiffs have not placed on record. It further shows that final arguments was heard, then they filed these applications to improve their case. The plaintiffs have come forward with such application to avoid final judgement. Such course is not permissible even with the aid of section of 151 of CPC.

9. It is pertinent to mention the Hon'ble Apex Court decision reported in **2013 AIR SCW 1564=[2013] 14 SCC 1 M/s Bagai Construction through its proprietor Mr. Lalit Bagai Vs/ M/s Gupta Building Material Store**

The Hon'ble Apex court observed that

"after change of various provision by way of Amendment in the civil procedure code it is desirable that the recording of evidence should be continuous and followed by argument and decision thereon within a reasonable time. This court repeatedly held that court should constantly endeavor of follow such a time schedule. if the same is not followed, the purpose of amending several provisions in the code would get defeated. In fact application for adjournment, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the

plaintiff has filed those two applications before the trial court in order to overcome the lacunae in adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forwarded with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Civil Procedure Code".

It is well settled principle of law that under order 18 Rule 17 of CPC for production of evidence not previous known or the evidence which could not be produced despite due diligence. After conclusion of his evidence he has to be satisfy the court that even after exercise of due diligence, the evidence was not within his knowledge and he could be produced before the court.

10. As per amended provision of the code contemplate and expect a trial court to hear the argument immediately after the completion of evidence and then proceed to judgement. It is necessary to file the application for reopening the evidence or recalling of any witness for further examination there is continued in evidence and arguments. The power Under Section 151of CPC is not intended to be used routinely merely for the asking, it will defeat very purpose of various amendments to the court to expedite trials. Where the application is found to be bonafide and where the additional evidence oral and documentary will assist the court to clarify the evidence on issues and will assist in rendering justice the court is satisfied that non production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witness or permit the fresh evidence. But it is does not so it should

ensure that the process does not become a protracting tactic. The court should take up and complete the case within a fixed time. If the court found application to be mischievous or frivolous or to cover up lacuna it should be rejected with heavy cost. Such evidence definitely was not genuine or relevant. The object of the application it is merely to protract the proceedings the court should reject application. The recording of evidence should be continued by argument without any gap. The court should constantly endeavor to follow such time schedule. The amended code expects the same.

11. Further this court relied on the Hon'ble Supreme Court decision reported in **2011 (11) SCC 275 AIR SC (CIVIL) 1000 K.K.Velusmamy Vs. N.Pallanisami**. The Hon'ble Apex court clearly held that under Order 18 Rule 17 of CPC the power inherited when the court after feels the additional evidence or recalling witness or fresh evidence is necessary to determine the facts on issue. The court can exercise his jurisdictional power, at any stage of the proceedings or on notice of the purpose also the court can exercise his power if it is necessary to clarify the duty regarding evidence led by the parties. This power is not intended to fill up omission in the evidence of witness already examined.

12. From the looking into the any angle in present case on hand, in the present case it could be clear from the act of plaintiff just protract the proceedings. It is found to be mischievous or frivolous or to cover up negligence. Despite of providing sufficient opportunity, the plaintiff not utilized the same and not produced the documents in time. In the present case already posted for argument, at this stage he preferred present applications. This clears the mind of court that the plaintiff has intentionally filed several applications just kills the previous time of court. This act shall be curbed. Therefore for the above reasons discussed supra

and by looking into the age of the case and facts and circumstance, the present applications have not involved any merits for consideration of this court. Hence, I answer the **Point No.1 in the Negative.**

13. **Point No.2:** For the aforesaid discussion, I proceed to pass the following.

**::O R D E R::**

The applications/IA No.43 to 45 filed by the Plaintiff Under Order 18 Rule 17 of CPC and Section 151 of CPC and U/O 7 Rule 14(3) of CPC are hereby dismissed on cost of Rs.200/- each.

Cost shall be payable to TLSA, Holenarasipura.

(Dictated to stenographer, directly on computer, typed by her revised and corrected by me then pronounced in the open court dated this 15<sup>th</sup> day of March, 2019)

**(R.Mahesha)**  
Civil Judge and J.M.F.C,  
Holenarasipura.