

ORDER ON IA.No.39 and 40

The plaintiffs have filed IA.No.39 U/o 18 Rule 17, R/w Section 151 of CPC, and IA.No.40 U/o 7 Rule 14 R/w Section 151 of CPC, to recall and seeking permission to produce the documents.

2. The applications are accompanied with the affidavits duly sworn by the plaintiff. In the affidavit they stated that during the Civil Vacation, the defendants tried to dig the foundation by JCB machine and thereby obstructed the possession of the plaintiff over the suit properties. Therefore in order to prove the same and in support of IA.No.38, the documents sought to be produce are very much necessary. Hence prays to allow the applications.

3. Per contra, defendant No.11 and 12 have filed objection stating that the applications are not maintainable either under law or on facts. Further contended that the copy of VOS.No.45/2022 discloses that the suit is filed already against defendant No.1(f), 11 and 12 for the relief of permanent injunction in respect of land bearing RS.No.182/2 and RS.No.182/4, therefore the question of recalling does not arise. Further contended that the applications have filed only to drag the proceedings and prays to dismiss the same.

4. Heard both side and perused the records.

5. The point that arises for my consideration is:

Whether the plaintiffs have made out sufficient grounds to recall and to condone the delay in producing the documents?

6. My findings to the above point is **in the Affirmative**, for following:

REASONS

7. The present applications have been filed by the plaintiffs to recall, reopen and seeking permission to produce the documents on the ground that the said documents are necessary to prove the interference by the defendants and they are necessary for just decision of the case.

8. On going through the records, it appears that the evidence of plaintiffs is commenced and the chief examination of PW.1 is concluded. At this stage, the plaintiffs filed application seeking permission to produced documents on the ground that the said documents are necessary for just decision of the case. Though defendant No.11 and 12 contended that in view of filing of OS.No.45/2022, the question of recalling does not arise. But in my opinion in order to avoid the multiplicity of proceedings, I feel it is just and proper to give an opportunity to the plaintiffs to produce the documents. Accordingly I answer the above point in the **Affirmative** and I proceed to pass the following:

ORDER

IA.No.39 and 40 filed by the plaintiffs U/Order 18 Rule 17, R/w Section 151 of CPC, and U/Order 7 Rule 14, R/w Section 151 of CPC, respectively are hereby allowed.

Accordingly case is reopened.

Call for further chief of PW.1.

Hence issue notice of IA.No.37 to proposed defendants.

Call on 29.02.2023.

**III Addl. Senior Civil Judge & JMFC.,
Ranebennur.**

