

**ORDER ON IA No.III**

The plaintiff has filed this application under order 9 rule 10 R/W Sec.151 of CPC for set aside the order dated : 12.11.2021 thereby restore the case of plaintiff.

2. The application is accompanying with memo of facts of plaintiffs counsel. Wherein he stated that this suit was posted for plaintiff evidence on 12.11.2021 but due to inconvenience of bus facility the plaintiff came to the court little bit late. At the time of called out of suit the plaintiff and his counsel absent. Hence, this court pleased to dismiss the suit for non-prosecution. Therefore absence was not intentional one. Hence, he prayed to restore the case.

3. The defendants counsel filed objections where in contended that the application is not maintainable either by law or facts. The plaintiff has not filed affidavit along with IA, therefore application has not maintainable. This court has given sufficient opportunity to the plaintiff but, he has not lead the evidence. Hence, he prayed to reject the application.

4. Heard both side.

5. On careful perusal of the materials on record it appears that this case was posted for plaintiff evidence on 12.11.2021 Before that this court has given sufficient

opportunity for plaintiff evidence, but, plaintiff has not presented. Again on 12.11.2021 plaintiff remained absent and no representation by plaintiffs counsel, therefore this court dismissed the suit for non-prosecution. On the same day plaintiff filed this application along with advancement application but this court has posted the case for 16.11.2011. Therefore the defendants have been adjourned the case for objection to IA No.3. The plaintiff has filed this suit for partition and separate possession. If not allow the application it will causes injustice to the plaintiff. If allow the application it could be disposed on merits. If allow the application no hardship will cause to defendant. The defendant has opportunity to cross examine. If reject the application it will leads to multiplicity of proceedings, Therefore, it is necessary to allow by imposing some cost. Hence, I proceed to pass the following,

**ORDER**

IA No.III filed by the plaintiff under order 9 rule 10 is hereby allowed with cost of Rs.3,000/-.

Office is directed to restore the case and put up from the original stage on 26.07.2022.

Both parties are directed to keep present on 26.07.2022, there is no

necessity of further summons or notice to any parties.

Plaintiff shall complete his evidence within the two dates of hearings. If any party will absent it may be proceeded for further in the absence of the parties.

Call on 26.07.2022

CJ & JMFC., Savanur.