

IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.

: PRESENT:

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
CIVIL JUDGE & JMFC., SHIGGAON.

ORIGINAL SUIT No.81/2017

DATED ON THIS THE 17th DAY OF NOVEMBER-2022

Plaintiffs : 1.Thippanna Dyamanna Thalavara
Aged about 70 years, Occ: Agriculture
R/o Panigatti, Shiggavi,
Dist: Haveri

2. Smt. Shantavva w/o Thippanna Thalavara
Age: 65 years, Occ: Household
R/o Panigatti, Shiggavi,
Dist: Haveri

[By Sri.S.K.A., Advocate]

V/s

Defendants: 1. Nagappa Veerappa Honnalli
Aged about 80 years, Occ: Agriculture
Occu; Panigatti , Shiggaon Taluk , Haveri
(Dead by LRs)

1(a) Smt. Shankravva w/o Basanagouda
Hudeda @ Veerpanagouda
Aged about 60 years, Occ: Household

R/o Mattigatti, Tq: Kundgol,
Dist: Dharwad

1(b) Smt. Rathnavva w/o Dharmappa
Gundudi
Aged about 58 years, Occ: Household ,
R/o Ganjigatti,,
Tq: Shiggaon, Dist: Haveri

1(c) Smt. Susavva w/o Basanagouda
Marigoudra
Age: 56 years, Occ: Household,
R/o Shishuvinahal, Tq; Shiggaon
Dist: Haveri

1(d) Smt. Lakshnavva w/o Veeranagouda
Byaligoudra
Age: 44 years, Occ: Household
R/o Panigatti, Shiggavi,
Dist: Haveri

2. Veerappa Nagappa Honnalli
Age: 50 years, Occ: Agriculture
R/o Panigatti, Shiggavi,
Dist: Haveri

3. Basavanneppa Nagappa Honnalli
Age: 45 years, Occ: Agriculture
R/o Panigatti, Shiggavi,
Dist: Haveri

4. Shekappa Nagappa Honnalli
Age; 43 years, Occ: Agriculture
R/o Panigatti, Shiggavi,
Dist: Haveri

[By Sri C.B.P Advocate]

PARTIES TO I.A.No.X

Applicants : 1. Nagappa Veerappa Honnalli
(Defendants) Aged about 80 years, Occ: Agriculture

(Dead by LRs)

1(a) Smt. Shankravva w/o Basanagouda
Hudeda @ Veerpanagouda
Aged about 60 years, Occ: Household
R/o Mattigatti, Tq: Kundgol,
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R/o Panigatti, Shiggavi,
Dist: Haveri

4.Shekappa Nagappa Honnalli
Age; 43 years, Occ: Agriculture
R/o Panigatti, Shiggavi,
Dist: Haveri

V/s

Opponents : 1.Thippanna Dyamanna Thalavara
(Plaintiffs) Aged about 70 years, Occ: Agriculture
R/o Panigatti, Shiggavi,
Dist: Haveri

2. Smt. Shantavva w/o Thippanna Thalavara
Age: 65 years, Occ: Household
R/o Panigatti, Shiggavi,
Dist: Haveri

ORDER ON I. A. No.X

Defendant Counsel has filed IA.X under Order 16 Rule 1 r/w Section 151 of CPC praying this Court to permit the defendants to file new witness list on behalf of the defendants.

2. Defendant No.3 has filed an affidavit accompanying the said IA averring that, on 19.02.2022 the defendants have filed witness list and has laid the chief examination of witness

on 20.07.2022 and now the stage is for cross of DW.2 and the date is given for his cross examination and the plaintiff has threatened him not to come for cross examination and thereby it is necessary to file new witnesses list and if the said application is not allowed he would be put to great hardship and hence, pray the Court to allow IA.X.

3. The plaintiff has filed objection to the said application interalia contending that, the present application is not maintainable as the defendant has already laid witness list and on 19.02.2022 they were permitted to lead evidence and DW.2 has laid chief examination and he is not coming to the Court and thereby, it is not possible to examine him and the defendants are falsely alleging that, the plaintiff has threatened DW.2 and on 19.02.2022 witnesses were cited in the witness list and only one witness i.e., Mahesh is being examined and one more witness Erappa has not been examined. Though there is occasion for doing so instead, the new witness list is being filed without reasons and thereby is not maintainable and said application is filed only to drag the matter and thereby, pray the Court to reject the said application.

4. Heard both and perused the materials on record.

5. On perusal the following points arise for my consideration.

POINTS

1. Whether the defendants have made out the ground to allow IA.No.X?
2. What order ?

6. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are here under:-

Points No.1 : In Affirmative

*Points No.2 : As per final order
for the following:*

REASONS

7. Points No.1:- The defendants have filed present application praying the Court to permit them to file new witnesses list and to examine witnesses accordingly stating that, the DW2 had laid chief examination but, plaintiff has threatened him for not to come for cross examination and the plaintiff has denied the said allegations and states that, one more witness in the earlier witnesses list can be examined but , he has not examined and thereby no new witness list

can be filed. Plaintiff has not quoted any provision of law which bars the defendants from filing new witness list if earlier witnesses have not turned up for evidence and further if the said application is rejected it would prevent the defendant from fending his defense by leading the evidence and it would go against the principles of natural justice whereas the said application if allowed no such hardship is seen to be caused to the other side. Hence Point No.1 is answered in Affirmative.

8. Point No.2 :- In view of the discussion made above, I proceed to pass the following:

ORDER

*IA.No.X filed under Order 16 Rule 1 r/w
Section 151 of Civil Procedure Code by
defendants is hereby allowed with cost o
Rs.200/- .*

**(NASRAT MUKHTAR AHMED KHAN)
CIVIL JUDGE & JMFC.,
SHIGGAON.**