

**IN THE COURT OF CIVIL JUDGE AND JMFC,, JEWARGI  
AT JEWARGI.**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,  
Civil Judge and JMFC, Jewargi.**

**Dated : This the 29<sup>th</sup> day of August, 2022**

**O.S.No.115/2014**

Between:

Iftedar Hussain and Another : **Plaintiffs**  
**(By Sri.K.N.T., and Sri. G.B., Adv.,)**

And

Sadiq Hussain and Others : **Defendants**  
**(D1, 2, 4, 6 & 7 By Sri.B.B., Adv)**  
**(D3 Exparte)**  
**(D5 and 10 By Sri. J.V.H., Adv.,)**  
**(D8 by Sri. B.G., Adv.,)**  
**(D9 Dead)**

**I.A No.19**

Shamshad Hussain : **Applicant/ Defendant No.8**

V/s.

Iftedar Hussain and Another: **Opponents/plaintiffs**

**ORDERS ON IA No.19**

The defendant No.8 has filed the application U/o 16 rule 1 of CPC seeking permission to file the list of witnesses.

**2.** The brief averments of the affidavit filed in support of the application are as follows:-

That, the defendant No.8 sworn to an affidavit stating that the matter is posted for the defendant evidence on last date of hearing. The other defendants lead their evidence. The present defendant has filed the counter claim claiming the ownership of the one of the suit properties under the memorandum of gift. For the better adjudication of the matter in the controversy this defendant deserver opportunity of being heard, by leading the evidence of attesting witnesses to the memorandum of gift deed dated 01-06-2008. The matter involves the valuable rights of the parties. Hence prays to allow the application.

**3.** On the other hand counsel for the defendants No.1, 2, 4, 6 and 7 filed objections to the application contending that the application filed by the 8<sup>th</sup> defendant is not maintainable in the eye of law. That one of the party to the suit cannot compel the other party to give evidence in his favour. That the proposed witness No.2 is the 1<sup>st</sup> plaintiff in this suit and he already

examined as PW1. So 8<sup>th</sup> defendant again can cross-examine PW1 touching to his defence by recalling him subject to his cross-examination. Hence prays to dismiss the application.

4. Heard the arguments. Perused the records.

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

**Point No. 1:- Whether the applicant proves that the application filed by him deserves to be allowed?**

**Point No.2 :- What order?**

6. I answer the above points as follows:-

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

**Point No.2 :- As per final order, for the following,**

### **REASONS**

**7. Point No.1:-** Having heard upon and on perusal of record it discloses that the plaintiffs have filed the suit against the defendants for the relief of partition and separate possession in respect of suit scheduled properties contending that the parties to the suit are tenants-in-common over the suit properties. The plaintiffs and defendant No.1, 2, 7, 5 and 10 have lead their evidence. The defendant No.8 also lead his evidence by his own. When matter posted for further defendant evidence the defendant No.8 has filed the present application seeking

permission to file the list of witnesses by mentioning two witnesses out of them one is the plaintiff No.1. He contended that he has filed the counter claim claiming the ownership on the one of the suit properties under the memorandum of gift. The witnesses mentioned in the list are the attesting witnesses to the memorandum of gift. Therefore it is necessary to examine them.

**8.** On the other hand counsel for defendants No.1, 2, 4, 6 and 7 objecting the application on the two grounds that one of the party to the suit cannot compel the other party to give evidence in his favour. Another ground is that the proposed witness No.2 is the 1<sup>st</sup> plaintiff and he has already examined as PW1. So 8<sup>th</sup> defendant again can cross-examine the PW1 touching to his defence by recalling him subject to his cross-examination.

**9.** Let me see is there any bar to call the opposite party to give evidence. In this regard it is profitable to refer the unreported judgment of Hon'ble High Court of Delhi, in the case of Atul Kumar Singh Vs Nitish Kumar and Others in CS(COMM) 258/2018, CC.25/2011 date of disposal 13-11-2019, wherein the Hon'ble High Court of Delhi has followed the ratio laid down by the Hon'ble High Court of Karnataka in the case of Syed Yasin Vs. Syed Shaha Mohd. Hussain, AIR 1967 Kant 37. wherein it is observed that :

*16. The plaintiff by contending that there is no bar on the right of a party to summon or examine another party including the opposite party to give evidence as his witness under the CPC, had relied upon a judgment of the Karnataka High Court in the case of Syed Yasin (supra), wherein it has been stated as under:*

*"8. A close examination of the provisions of Order XVI of the Code which deals with the summoning and attendance of witnesses, makes me come to the conclusion that there is considerable force in the contention of Sri Jagirdar that one party can apply for the examination of the other party as his witness. As already pointed out there is no such restriction in Rule 1 of Order XVI. If the intention of the Legislature was to prohibit the examination of one party by the other as his witness, it would have stated so....."*

**10.** As per the ratio laid down in the above said judgment there is no bar to examine one of the party by the others as his witness. Moreover as contended by the defendant No.8 the plaintiff is the alleged attesting witness to the alleged memorandum of gift. To prove the gift deed, examination of attesting witness is mandatory. Therefore the defendant No.8

cannot be curtailed to examine the attesting witness to the alleged memorandum of gift. Moreover the plaintiffs themselves not objecting the application. Therefore, it is just and necessary examine the attesting witnesses of alleged memorandum of gift. Hence the 8<sup>th</sup> defendant is to be permitted to file the list of witnesses. Accordingly, I answer the Point No.1 in the Affirmative.

**11. Point No.2** :- For the above reasons, I proceed to the pass the following :-

**ORDER**

I.A.19 filed by the 8<sup>th</sup> defendant U/O  
16 Rule 1 of CPC is hereby allowed.

Consequently 8<sup>th</sup> defendant is  
permitted to file the list of witnesses.

(Dictated to the Stenographer directly on Computer corrected and then pronounced by me in the open court on the 29<sup>th</sup> day of August-2022.)

**(D.RAMESH)**  
**Civil Judge & JMFC,**  
**Jewargi.**