

KAMS300001562023



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 19th day of February, 2025.

OS No.33/2023

Plaintiff: Smt.Sarasamma, W/o Late Putta Bhovi,
D/o Late Dasa Bhovi, Aged about 51 years,
R/at Mookanahalli village, Kasaba Hobli,
Hunsur Taluk, Mysore District.

-Vs-

Defendants:1. Smt.Puttarathnamma, W/o Late Dasabhovi.,
Aged about 75 years, R/at Mookanahalli village,
Kasaba Hobli, Hunsur Taluk, Mysore District.

2. Sri.Ramadasa Bhovi, S/o Late Dasa Bhovi.,
Aged about 47 years, R/at Mookanahalli village,
Kasaba Hobli, Hunsur Taluk, Mysore District.

3. Smt.Rukkamma, W/o Ramachandra Bhovi,
D/o Late Dasabovi, Aged about 49 years,
R/at Chapparadahalli, Ravanduru Hobli,
Periyapatna Taluk, Mysore District.

4. Smt.Lakshamma, W/o Govinda Bhovi.,
D/o Late Dasabhovi, Aged about 45 years,
R/at Mookanahalli village, Kasaba Hobli,
Hunsur Taluk, Mysore District.

5. Smt.Nagu, W/o Swamy,
D/o Late Dasabhovi, Aged 42 years,
R/at Siddalingapura village and Post,
Kasaba Hobli, Mysore Taluk and District.

1.	Provision under which the applications are filed	:	Under Section 151 of CPC and Under Order XVIII Rule 17 of CPC and Order VII Rule 14 of CPC
2.	Relief sought for	:	Reopen the case, to recall PW1 for the purpose of chief-examination and to condone the delay in producing the documents.
3.	The date on which the applications are filed	:	27.01.2025
4.	Number of the applications	:	IA No.VIII to IA No.X
5.	The date on which the objection are filed by opponent	:	03.02.2025
6.	The date on which the orders passed on the said applications	:	19.02.2025

ORDERS PASSED ON IA NO.VIII to X

When the case is posted for further chief of DW2 and for cross of DW1, the learned counsel for the plaintiff filed IA No.VIII under Section 151 of CPC, IA No.IX under Order 18 Rule 17 of CPC to reopen the case and to recall PW1 for the purpose of further chief-examination and IA No.X under Order 7 Rule 14 of CPC to condone the delay in producing the documents.

2. All the three applications are supported with the affidavits of the plaintiff wherein she has stated that, the suit is filed for the relief of partition and separate possession and now the case is posted for cross-examination of DW1. Now she wants to produce the material documents in order to prove her case. The delay in production of the said documents is not intentional but for bonafide reasons. The said documents are very relevant to prove her case. As such it is just and necessary to reopen the case and to recall PW1 for the purpose of further chief-examination. Hence, prayed to allow the applications.

3. On the other-hand the defendants have filed common objection contending that, the applications are not maintainable under law or on facts. The applications are filed only to drag on the proceedings. The documents to be produced are not at all pertaining to suit schedule property. The documents belong to unknown persons. The applications are filed to waste the valuable time of the court. Hence, prayed to dismiss the applications with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and defendants and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out sufficient grounds to reopen the case?
2. Whether the plaintiff has made out sufficient grounds to recall PW1 for the purpose of further chief-examination?
3. Whether the plaintiff has made out sufficient grounds to condone the delay in production of documents?
4. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per the final order
for the following:

REASONS

6. **Point No.1 to 3:-** Since these points are inter-connected with each other and needs common discussion on the same set of facts, these points are taken up together for discussion.

7. The plaintiff filed the suit against the defendants seeking the relief of partition and separate possession of her 1/6th share in the suit schedule properties. It is the specific case of the plaintiff that, one Dasabhovi is her father, 1st defendant is her mother and defendant No.2 is her brother and defendants No.3 to 5 are her sisters. Her one more sister Manjula is no more. The suit schedule properties are the ancestral and joint family properties of herself and the

defendants and she has got 1/6th share over the suit schedule properties. Hence, she has maintained the suit.

8. After filing of the suit this court issued summons to the defendants. The defendants appeared through their respective counsels and filed separate written-statements denying the case of the plaintiff. In the written-statements defendants No.1 and 2 have contended that, the plaintiff and defendants No.3 to 5 are having no right and interest over the suit schedule properties. In the written-statements defendants No.3 to 5 have sought for their legitimate share over the suit schedule properties.

9. It is the specific case of defendants No.1 and 2 that, the suit schedule item No.1 property is the self-acquired property of father of the plaintiff and defendants No.2 to 5. It is also contended that, the suit schedule item No.2 property is acquired by the father of plaintiff on the basis of his possession and it was granted in his favour. The suit schedule item No.3 property is granted to the 1st defendant. On 06.01.2021 the 1st defendant has executed relinquishment deed infavour of the 2nd defendant and as such the plaintiff is having no right over the suit schedule properties. On the basis of rival pleadings of the parties on 26.06.2023 this court framed the issues. In order to prove the case the plaintiff stepped into the witness box and examined herself as PW1 and got marked five documents as per Ex.P1 to Ex.P5. On the

other-hand the 2nd defendant examined himself as DW1. Further, the 4th defendant also examined herself as defendant No.2 and she got marked 16 documents as per Ex.D1 to Ex.D16. When the case is posted for cross-examination of DW1 and DW2 these applications came to be filed.

10. As per the plaintiff some relevant documents have not been produced by her during her evidence and those documents are very much necessary to prove her case. As such she has sought for re-opening the case, recall PW1 and to permit her to produce documents. It is the objection raised by the defendants that, the documents are not relevant. Whether the documents are relevant or not will be considered at the time of dismissal of the suit. Mere marking of the documents nor will not become proof of those documents. The documents needs to be proved as per procedure. These documents are the handwritten RTC and certified copy of Index of Law and Record of rights. These documents are public documents and if the applications are allowed no hardship will be caused to the other-side. On the other-hand if the applications are not allowed the plaintiff will be put to great hardship. Further if the documents are allowed definitely the defendants will get an opportunity for cross-examining the witness on the said documents also. Hence, this court comes to the conclusion that the plaintiff has made out sufficient grounds to reopen the case, to recall PW1 for the purpose of further chief-

examination and to condone the delay in production of the documents. The delay caused could be compensated by imposing costs. Accordingly, Point No.1 to 3 are answered in the Affirmative.

11. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.VIII filed under Section 151 of CPC, IA No.IX filed under Order 18 Rule 17 of CPC and IA No.X filed under Order 7 Rule 14 of CPC by the plaintiff are hereby allowed with costs of Rs.200/- each.

Accordingly, the case is reopened and PW1 is hereby recalled for the purpose of chief-examination and the delay in production of the documents is hereby condoned subject to payment of costs.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 19th day of February, 2025.)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.