

KAMS300041912022



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

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

Dated this the 01st day of October 2024.

OS No.163/2022

Plaintiff: Sri.P.B.Mahendra, S/o Late P.M.Basavaraju,
Aged about 37 years, R/at Door No.744/12B,
“Shiva Gowri Nilaya”, Giridharshini Layout,
Alanahalli, Mysore.

-Vs-

Defendants: 1. Smt.Bhagyamma, W/o Sri.N.Nagaraju,
Aged about 55 years,
2. Sri.N.Nagaraju, S/o Late Nagaiah,
Aged about 66 years,
3. Sri.H.N.Manjunath, S/o Sri.N.Nagaraju,
Aged about 35 years,
4. Smt.H.N.Roopini, D/o Sri.N.Nagaraju,
Aged about 26 years,

All are residing at Hunsur Town,
First Division, Saraswathipuram,
Santemala, Hunsur, Mysore District.

1.	Provision under which the applications are filed	:	Under Section 151 of CPC, under Order 18 Rule 17 of CPC and under Order VII Rule 14(3) R/w Section 151 of CPC
2.	Relief sought for	:	To reopen the case, to recall PW1 for the purpose of further chief-examination and to condone the delay in production of the documents
3.	The date on which the applications are filed	:	12.08.2024
4.	Number of the application	:	IA No.IV to VI
5.	The date on which the objections are filed by the opponents	:	04.09.2024
6.	The date on which the orders passed on the said applications	:	01.10.2024

ORDERS PASSED ON I.A.NO.IV TO VI

The learned counsel for plaintiff filed IA No.IV under Section 151 of CPC to reopen the case, filed IA.No.V under Order 18 Rule 17 of CPC to recall PW1 for the purpose of further chief-examination and filed I.A No.VI under Order VII Rule 14(3) R/w Section 151 of CPC to condone the delay in production of the documents.

2. All the applications are supported with the affidavits of the plaintiff stating that, he has filed the suit against the defendants seeking the relief of specific performance of sale agreement. He has been examined as PW1

and the case was posted for further chief-examination. Since he was suffering from severe back ache he was advised to take rest and not to move. He could not contract his counsel for giving instructions for his further chief-examination and this court taken his further chief-examination nil and posted the matter for cross-examination. Very recently he has obtained the documents and it is necessary to mark those documents and for that purpose it is just and necessary to reopen the case and to recall him. The delay in producing the documents is not intentional. If the applications are not allowed great hardship is going to be caused to him, on the other-hand if the applications are allowed no hardship is going to be caused to the other side. Hence, prayed to allow the applications.

3. On the other-hand the learned counsel for the defendants filed common objection contending that, neither in the legal notice nor in the plaint the plaintiff has stated about the documents now produced and change of hands and the documents cannot be accepted. Without pleadings the plaintiff cannot introduce new documents to the suit. The plaintiff is expected to approach the court with clean hands. Without pleading the plaintiff cannot rely upon the documents. The applications are devoid of merits. Hence, prayed to dismiss the applications with costs.

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

POINTS

1. Whether the plaintiff has made out sufficient grounds to reopen the case and to recall PW1 for the purpose of further chief-examination ?
2. Whether the plaintiff has made out sufficient grounds to condone the production of the documents?
3. 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: As per the final order
for the following:

REASONS

6. **Point No.1 and 2:** Since these two points are inter-connected with each other and in order to avoid repetition of facts, these points are taken up together for discussions.

7. The plaintiff filed the suit against the defendants seeking the relief of specific performance of contract directing the defendants to execute registered sale deed in favour of the plaintiff in respect of the suit schedule property along with possession. In the alternative the plaintiff has sought for refund of earnest money of Rs.30,00,000/- along with interest at the rate of 24% p.a from 13.09.2013 till the date of realization. It is the specific case of the plaintiff that the defendants are the absolute owners of the suit schedule properties and on 10.09.2013 the plaintiff and the defendants entered into a registered sale agreement for a total sale consideration of Rs.30,00,000/- and the plaintiff paid entire

sale consideration of Rs.30,00,000/- but the defendants could not able to complete the durasth process and the defendants revoked the GPA executed by them after knowing the process about durasth, Hence, the plaintiff filed the suit.

8. The defendants appeared and filed the written-statement denying the entire case of the plaintiffs. The issues have been framed. On 10.06.2024 the plaintiff stepped into the witness box and examined himself as PW1 and got marked four documents as per Ex.P1 to P4. Thereafter in spite of providing sufficient opportunities PW1 failed to appear before the court and his further chief-examination has been taken as nil and now the case is posted for cross-examination. In the affidavits filed in support of the applications the plaintiff stated that due to his ill-health he was advised to take best rest and he could not able to contact his counsel to give instructions for his further chief-examination. Now the applications are filed to reopen the case, to recall PW1 for the purpose of further chief-examination and to condone the delay in production of the documents. At the time of addressing the arguments learned counsel for the defendants argued that, the said documents are not at all connected to this suit and there is no pleading in the plaint about the said documents and as such the documents cannot be received and marked. The documents produced by the plaintiff are pertaining to the suit schedule property only. Further mere marking of the documents is not proof of the documents. If the said documents are marked definitely the defendants will get an opportunity for cross-examine PW1. However the said delay could be compensated

by imposing costs. If the applications are allowed and PW1 is further chief-examined no hardship is going to be caused to the defendants. Hence, this court comes to the conclusion that, the plaintiff has made out sufficient grounds to reopen the case and to recall PW1 for the purpose of further chief-examination and to condone the delay in production of the documents. Hence, Point No.1 and 2 are answered in the affirmative.

9. **Point No.3:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

IA No.IV filed under Section 151 of CPC, IA.No.V filed under Order 18 Rule 17 of CPC and I.A No.VI filed under Order VII Rule 14(3) R/w Section 151 of CPC are hereby allowed with costs of Rs.200/- each.

Accordingly, the case is reopened and PW1 is hereby recalled for the purpose of further chief-examination and the documents are received subject to payment of costs.

(Typed by me directly on the Laptop, same is corrected and pronounced by me in the open court on this the 01st day of October 2024.)

(ANITHA)

Addl. Senior Civil Judge and JMFC,
Hunsur.