

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,

Senior Civil Judge & JMFC, Devadurga.

O.S.No.121/2022

DATED : THIS THE 15th DAY OF SEPTEMBER 2023

Plaintiffs:1. Mallikarjun Patil S/o. Hampanna Patil.

(By Sri.V.M.M, Advocate)

--V/s--

Defendant:1. Hampanna S/o. Late Yankappa Patil
and others.

(D.1 to 3 by Sri.A.M.P.Advocate)
(D.4 & 5 by Sri.B.S.Advocate)

Provision under which the application is filed	U/o.VIII Rule 1-A R/w.Sec.151 of C.P.C.
Relief sought for	Produce the documents.
The date on which the application is filed	24.06.2023
Number of the application	IA.No.V
The date on which the objections are filed by different opponent	10.07.2023
The date on which the orders were passed on the said application	15.09.2023

**Senior Civil Judge & JMFC.,
Devadurga.**

ORDER ON IA NO.5

The present suit is for partition and separate possession.

2. The present application has been filed by plaintiff seeking permission to produce documents. The plaintiff submits that he did not produce the documents in the earlier stage and hence he intends to produce them. In this regard, plaintiff prays as above.

3. Defendant no.4 and 5 in the objections contended that the present application is not maintainable. No proper reasons are shown to allow the application. The documents intended to be produced are not relevant for adjudication of the suit. The present application is filed to drag the matter. In this regard, defendant no.4 and 5 pray to reject the application.

4. Heard arguments of counsel.

5. Considering the case of the parties following points arise for my consideration.

1. Whether plaintiff has made out a case to permit him to produce documents?

2. What order?

6. My finding for the above points are as follows

Point No.1 : In the affirmative

Point No.2 : As per final order
for the following ;

REASONS

7. **Point No.1:-** In the case at hand, the plaintiff intends to produce the documents. It is necessary to note that right of plaintiff to put forth his case cannot be curtailed as the same amounts to curtailing the rights of plaintiff to put forth his stand. Considering the application and the objections I am of the view that the defendants have every opportunity to test the documents sought to be produced in the cross-examination. This being the case, as the defendants have the right to cross examine and hence to test the document, no harm will be caused to the defendants if documents are taken on record. This being the case, it is not just and proper to curtail the rights of plaintiff from producing the documents.

8. It is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

In view of the law on hand and considering the circumstance of the present case I am of the view that there is no impediment to allow the application.

9. It is to be considered that if the present application is not allowed plaintiff cannot put forth his case and hence the inconvenience which may be caused to him is more than the inconvenience which may be caused to the defendants if the application is allowed. Further, if the application is not allowed the injury which may be caused to plaintiff cannot be compensated at any cost, on the other hand the defendants will have the opportunity to contest the matter and get the same decided on merits. Considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no. 1 in the affirmative.

10. **Point no.2:-** In view of reasons on point No.1 and 2, I proceed to pass the following,

ORDER

IA No.5 filed by the plaintiff is hereby allowed on cost of Rs.100/-.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the 15th day of September 2023.)

(Sri.Hanumanth Satwik)
Senior Civil Judge and JMFC,
Devadurga.