

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.4/2017

DATED : THIS THE 6th DAY OF APRIL 2024.

Plaintiffs: 1. Lingamma @ Siddalingamma W/o. Govindaraj
and another.

(By Sri.B.S., Advocate)

--V/s--

Defendants:1. Yallanagouda S/o. Late Naganagouda.

(By Sri.A.T.B., Advocate)

Provision under which the application is filed	U/o.XVIII Rule 17 R/w.151 of CPC. and U/o.VII rule 1(4) R/w.151 of C.P.C.
Relief sought for	To permit further chief of of P.W.2 and permit the plaintiff to the file list of documents.
The date on which the application is filed	12.03.2024 and 20.03.2024

Number of the application	IA No.XII and XIV.
The date on which the objections are filed by different opponent	20.03.2024 and 01.04.2024.
The date on which the orders were passed on the said application	06.04.2024

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

ORDER ON IA NO.XII AND XIV

The present suit is for declaration, partition, rectification of records and for permanent injunction.

2. These two applications are interconnected to each other. Hence for the sake of convenience and to avoid repetition of facts these applications are considered together for common discussion. The present applications have been filed by plaintiffs praying to recall PW1 to lead further chief examination and to produce documents. The plaintiffs submits that to protect their legal rights further chief examination of PW1 is necessary. He did not produce some of the documents as they were not in their coustody. They collected the said documents recently. The said documents are necessary for proper adjudication of the suit. In this regard, the plaintiffs pray as above.

3. The defendants in their objections contended that the present application is not maintainable. The plaintiffs sought two reliefs in the same application. PW1 has been cross-examined. The application to recall PW1 is not supported by the documents. The present application is filed on imaginary grounds. The plaintiffs are in the habit of protracting the proceedings. Further, with regard to IA No.14 the defendants contended that the documents sought to be produced are already furnished. The present application is filed at a belated stage. In this regard, the defendants pray to reject the application.

4. Heard arguments of counsel.

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

1. Whether plaintiffs have made out a case to recall PW1 and permit them to lead further chief examination?
2. Whether plaintiffs have made out a case for permitting them to produce the documents as sought for?
3. What order?

6. My finding for the above points are as follows

Point No.1 : In the affirmative

Point No.2 : In the affirmative
Point No.3 : As per final order
for the following ;

REASONS

7. **Point No.1 and 2:** - For the sake of convenience and to avoid repetition of facts these points are taken together for common discussion. It is the case of plaintiffs that to protect their legal rights further chief examination of PW1 is necessary. He did not produce some of the documents as they were not in their custody. They collected the documents recently. The said documents are necessary for proper adjudication of the suit.

8. Be it noted, the plaintiffs intend to produce documents. It is necessary to note that right of plaintiffs to put forth their case cannot be curtailed as the same amounts to curtailing the rights of the plaintiffs to put forth their stand. Considering the applications and the objection I am satisfied with the reasons made out by plaintiffs for not producing the documents sought to be produced and for not getting the said document marked, at the earlier stage of the case. I am of the further view that the defendants have every opportunity to test evidence of PW1 by way of cross examination and hence to test the documents sought to be produced. This being the case, as the defendants have the right to cross examine PW1 and hence to test the

averments and the documents, no harm will be caused to the defendants if PW1 is recalled for producing the documents sought to be produced, as the right of the defendants to cross examine PW1 and hence to test his averments and test the genuineness of the documents remains intact. This being the case it is not just and proper to curtail the rights of plaintiffs from recalling PW1 and to produce the documents.

9. 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 the contention of the defendants are of no avail to them. Even otherwise, the contentions of the defendants are the subject matter of trial.

10. Be it noted, the defendants contended that the plaintiffs sought two reliefs in the same application, which is not permissible. In this back ground, I have perused the application. In the application plaintiffs sought for setting aside of the order dated:04.01.2024 and recall PW1 to further chief-examination. It is germane to note that the above said two reliefs are complimentary to each other. The later relief is consequential to the former relief. Thus, they cannot be said to be two separate reliefs. This being the case, the contention of the defendants cannot be accepted.

11. It is to be considered that if the present application is not allowed plaintiffs cannot substantiate their case and hence the inconvenience which may be caused to them is more than the inconvenience which may be caused to the defendants if the applications are allowed. Further, if the applications are not allowed the injury which may be caused to plaintiffs 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 and 2 in the affirmative.

12. **Point no.3:** - In view of reasons on point No.1 and 2, I proceed to pass the following,

O R D E R

IA No.12 and 14 filed by the plaintiffs are hereby allowed on cost of Rs.200/- each.

Plaintiffs are permitted to produce documents and lead further chief examination through PW1.

(Dictated to the Stenographer directly on the computer, typed by him corrected by me and then pronounced in the open court on this the 6th day of April 2024).

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.