

COMMON ORDERS ON I.A.No.11 to 13

The defendant No.4 to 8 have filed the I.A.No.11 U/S.151 of C.P.C., to reopen the above case for further chief-examination of DW-1 and I.A.No.12 U/O.18 Rule 17 r/w. 151 of C.P.C., to recall the DW-1 for further chief-examination of DW-1 and I.A.No.13 U/O.8 Rule 1(A) of C.P.C., along with list with documents and prayed to condone the delay if any in filing the documents.

2. The copies of I.As., were served to the other side. The counsel for the plaintiff has filed the detailed common objections to I.A.No.11 to 13 and resisted the I.As., filed by the defendant No.4 to 8.

3. Heard arguments of both sides.

4. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

1) Whether the I.A.No.11 to 13 filed by the defendant No.4 to 8 are deserve to be allowed?

2) What order?

5. My findings on the above points are as follows :

Point No.1 : In the Affirmative,

Point No.2 : As per the final Order,

for the following:

REASONS

6. **POINT NO.1:-** When the matter is set down for further evidence of defendants' side, at that time the

defendant No.4 to 8 have moved these I.As., to reopen the case for further chief-examination of DW-1, to recall the DW-1 for further chief-examination and to condone the delay if any in filing the list with documents. It is urge of the defendant No.4 to 8 that, they have given evidence on their behalf and marked some documents. Thereafter, the defendant No.4 to 8 have secured the documents in support of their defense, those documents are very much necessary to defend the case of the defendant No.4 to 8.

7. On the other hand, the plaintiff contended that, the I.As., filed by the defendant No.4 to 8 are liable to be dismissed as same is barred by statute, as documents sought to be produced are neither referred in their written statement nor in the chief-examination, in this regard Order VI Rule 9 strictly speaks about effect of document, same is extracted and reproduced for easy reference of this Court 'Effect of document to be stated,- wherever the contents of any document, are materials, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out of the whole or any part thereof, unless the precise words of the document or any part thereof are material.' In this particular case defendants unequivocally and explicitly said that they have not mentioned the details of document, nor they have given any kind of details of content of document which now sought to be produced, as such defendant No.4 to

8 cannot be permitted to file any documents at this belated stage.

8. On perusal of the material placed on record, admittedly, it is suit for partition and separate possession. In the instant suit the defendant No.4 to 8 filed an I.A., to reopen the case for chief-examination of DW-1 and to recall DW-1 for further chief-examination and also sought for to condone the delay if any in filing the documents mentioned in the I.A. Admittedly, it is a suit for partition, to defend the case of the defendant No.4 to 8 the one more opportunity would be given to the defendant No.4 to 8 to lead further chief-examination of DW-1 and the delay if any is condoned in filing the documents by imposing cost, it would meet the ends of justice. If these I.As., are allowed and defendant No.4 to 8 have marked the documents mentioned in the I.As., as exhibits of 'D' series, certainly the counsel for the plaintiff would get an opportunity to cross-examine the DW-1 with regard to the documents mentioned in the I.As. If these I.As., are allowed, there is not hardship cause to the other side. For considering all these reasons, I answer point No.1 in the 'Affirmative'.

9. **POINT NO.2:-** In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.11 to 13 filed by the defendant No.4 to 8 are hereby allowed on payment of cost of Rs.300/- each.

The case is reopened for further chief-examination of DW-1.

Call on for further chief-examination of DW-1 by 10.03.2024.

**(SHIVAKUMAR.R)
ADDL. SR. CIVIL JUDGE &
J.M.F.C., MAGADI.**