

COMMON ORDERS ON I.A.No.14 to 16

The plaintiff has filed the I.A.No.14 U/S.151 of C.P.C., to reopen the above case for further chief-examination of PW-1 and I.A.No.15 U/O.18 Rule 17 r/w. 151 of C.P.C., to recall the PW-1 for further chief-examination of PW-1 and I.A.No.16 U/O.7 Rule 14(3) 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 defendant No.4 & 10 have filed the common objections and resisted the I.As., filed by the plaintiffs. The counsel for the defendant No.5 to 9 has filed the memo adopting the objections filed by the defendant No.4 & 10 on I.A.No.14 to 16 on their behalf also.

3. Heard arguments on 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.14 to 16 filed by the plaintiffs 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 arguments on merits, at that time the plaintiff has moved these I.As., to reopen the case for further chief-examination of PW-1, to recall the

PW-1 for further chief-examination and to condone the delay if any in filing the list with documents. It is urge of the plaintiff that, the plaintiff has not produced the sale deeds at the time of adducing the evidence of plaintiff's side by oversight. Those documents are very much necessary for proper adjudication of the matter.

On the other hand, the defendant No.4 to 10 contended that, the plaintiff intended to produce two sale deeds i.e., sale deed dated: 28.12.2015 was marked on the side of defendants' side as Ex.D35 and with regard to the sale deed dated: 24.10.2017 there is no pleading with that effect. Hence, the I.As., filed by the plaintiffs are not tenable in the eye of Law.

8. Admittedly, it is a suit for declaration and injunction in respect of suit schedule property. In a suit for declaration, the burden of proof is always lies upon the plaintiffs. Under these facts and circumstances, the one more opportunity would be given to the plaintiffs to lead further chief-examination of PW-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 plaintiffs have marked the documents mentioned in the I.As., as exhibits of 'P' series, certainly the counsel for the defendants would get an opportunity to cross-examine the PW-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.14 to 16 filed by the plaintiffs are hereby allowed on payment of cost of Rs.300/- each.

The case is reopened for further chief-examination of PW-1 by 11.03.2025.

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