

ORDER ON I.A.No.XIV and XV

These two applications filed by the plaintiff counsel for reopen the case for leading further evidence and seeking issuance of summons to witnesses.

2. It is the present suit is for the relief of declaration and injunction in respect of suit schedule property. Already both the sides evidence was completed. The plaintiff want to examine two more witnesses in support of their case. Those witnesses voluntarily come before the Court to give evidence in support of the plaintiff. Further those witnesses ought to have examined but the defendants threatened the their witnesses. Hence, now, the witnesses voluntarily present before the Court and to lead evidence on behalf of plaintiff.

3. In turn the defendant filed objection to the IA.No.XIV and XV and it is contended that, the present applications is not at all maintainable in the eyes of law. Further both the sides evidence was completed and matter is set down for final argument. At this stage plaintiff want examine these two witnesses which is not at all permissible in the eyes of law. Hence, these defendants prayed to reject the applications.

4. Heard arguments of the both sides.

5. The following points arise for my consideration:

P O I N T S

- 1) Whether the plaintiffs have made out grounds to allow the applications?
- 2) What Order?

6. My finding to the above points are as follows:

*Point No.1 : In the **Affirmative**.*

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

R E A S O N S

7. **Point No.1 :-** Admittedly the present suit filed by the plaintiff against the defendants for the relief of declaration and injunction in respect of suit schedule property. It is contended by the plaintiff that, he has purchased the suit schedule property from the husband of defendant No.1 under register sale deed on 10.12.1980. In turn the defendants denied the same. Admittedly, in the present suit both sides evidence was completed and matter was posted for final arguments. These two present applications has been filed by the plaintiffs counsel to re open the case for leading further evidence of plaintiff by examining two witnesses on his behalf. Admittedly, the burden on his plaintiff to prove his case and opportunity should be given to the plaintiff to prove his case. Hence plaintiff has made out grounds to allow the applications and for inconvenience to the defendants may be consider by imposing cost. Accordingly, I answer Point No.1 in the **Affirmative**.

9. **Point No.2:-** For the forgoing reasons, discussion made and answered given to Point No.1, I proceed to pass following:-

ORDER

The applications filed by the plaintiff is hereby allowed on cost of Rs.200/- each.

The stage is reopened for leading further evidence of plaintiff.

Accordingly issue witness summons to the witnesses as provided by the plaintiff along with IA No.XV.

Call on 09.04.2025.

(RAJU K SHEDBALKAR)

C/c Addl. Civil Judge & JMFC.,
Soraba.

ORDER ON I.A.No.XI

This instant application filed by plaintiff prayed to examine the witnesses.

2. In an annexed Affidavit the plaintiff sworn to the effect that to prove the plaintiff's case it is necessary to examine the witnesses in the agreement of sale. Therefore the plaintiff prayed to allow the instant application to examine the material witnesses to prove his case. If the application is not allowed then plaintiff will be put great hardship and loss, on the other hand no hardship would be caused to the other side. On these grounds the plaintiff prayed to allow the application.

3. On the other hand the defendant No.2B submitted an objection against along the further evidence of plaintiff after completion of cross-examination. Further submits that same may be consider as objection on I.A No.XI. It is contended that, the plaintiff further evidence was taken as nil on 19.01.2023 and they got sufficient opportunity from 04.10.2021 to 19.02.2023 but the plaintiff not examine the witnesses. With all these contentions prayed to dismiss the application filed by the plaintiff.

4. Heard arguments both sides.

5. The following points arise for my consideration:

P O I N T S

- 1) Whether the plaintiff has made out grounds to allow the application?
 - 2) What Order?
6. My finding to 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 :-** This is a suit filed by the plaintiff against the defendant for the relief of specific performance of contract and other consequence relief. Admittedly plaintiff was examined as PW.1 on 22.09.2022 but on the defendant side no one is appeared for cross-examination. Hence this Court the cross-examination of PW.1 taken as nil and matter was posted for further evidence of plaintiff. Thereafter on 19.01.2023 this Court taken the further defendant as nil and posted the matter was defendant evidence. Then on 22.02.2023 one Sri.Deepak.K.Kallapur present before the Court and filed a memo reporting that the defendant No.2 Sri.Vadiraj Achar was died living behind legal representative. Thereafter the plaintiff counsel filed I.A No.V to VII applications to bring the Lrs of defendant No.2. Then the legal representative of defendant No.2 came on regretted and filed written statement and objected the claim of the plaintiff. At this stage the plaintiff has filed instant application for examination of witnesses on his behalf. On the other hand the defendant No.2B contended that, the plaintiff has got sufficient opportunity to lead evidence but he fail to examine the same and at this stage which is permissible under law to examine on his behalf.

8. On perusal the materials available on record it shows that the plaintiff filed this suit against the defendant for the relief of specific performance of contract and other consequence relief. In order to substantiate his plaint to prove his contention and in support of his case he want to examine the other witnesses as per the least. But the plaintiff came before the Court to prove his case. Hence he has got every right to prove his case by leading cogent evidence and examine the witnesses. On the other hand the defendant will

having opportunity to cross examine the plaintiff witnesses. Hence at this stage if the application filed by the plaintiff is allowed no prejudice will be cause to the defendant. On the other hand the defendant will be compensated by way of imposing cost to the plaintiff by leading further evidence by condoning the delay. Hence at this stage it is just and proper to allow the application filed by the plaintiff by imposing cost on the plaintiff. Accordingly I answer Point No.1 in the ***Affirmative***.

9. **Point No.2:-** For the forgoing reasons, discussion made and answered given to Point No.1, I proceed to pass following:-

ORDER

I.A.No.XI filed by the plaintiff U/O 16 Rule 3(3) of CPC is hereby allowed on cost of Rs.300/-.

Issue witness summons as mentioned along with the IA.No.XI, if PF and copies furnished. Further it is directed to if the plaintiff counsel not furnished the PF and IA copies on or before 20.02.2025.

Then this Order will stand vacated.

Call on 20.03.2025.

(RAJU K SHEDBALKAR)
C/c Addl. Civil Judge & JMFC.,
Soraba.