

ORDERS ON MEMO

The Counsel for the defendant No.4 has filed a memo submitting that the evidence given by defendant No.1 is adopted by the defendant No.4 in the interest of justice and equity.

The plaintiff has filed objections to the memo contending that the same cannot be accepted as it will take away the right of cross examination of the plaintiff and is in violation of the Sec.137 and 138 of the Indian Evidence Act, 1872 and among these grounds prays for the memo to be dismissed.

On careful perusal of the issues, burden has been placed on defendant No.4 to prove whether defendant No.1 to 3 are the lawful owners in possession and enjoyment with the suit Item No.1 to 3, 5 to 7 'B' schedule and Item No.1 to 3 of 'A' schedule.

Concept of filing a memo adopting the evidence of another defendant cannot be entertained as no evidence affidavit is filed by the

defendant No.4 and therefore defendant No.4 cannot be cross examined on the basis of a memo. Moreover, since the burden has been placed on the defendant No.4, if he indeed has the intention of leading evidence, he has step into the witness box and speak by filing his evidence affidavit and cannot seek to adopt the evidence of some other defendant. Therefore, the said memo cannot be considered and the case is posted for defendant evidence of defendant No.4.

Call on : 13.02.2025.

Addl. Civil Judge & JMFC.,
Pavagada.