

KAUK020001562025



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, KARWAR, UTTARA KANNADA**

Dated this the 9th Day of October, 2025

PRESENT : **SRI. GANESHA PADIYAR U.,**
B.Com. LL.B.
Addl. Senior Civil Judge & JMFC.,
Karwar.

O.S.No.4/2025

Plaintiff : Smt. Seema W/o Late Prabhakar Naik,
Age 46 years, Occ: Household,
R/o House No.1031,
Vaman Ashram Road,
Karwar.

(By Sri. R.V. Bhat Advocate)

- Vs -

Defendants : 1. Sri. Ganesh Prabhakar Naik,
Age 32 years, Occ: Business,
R/o House No.1031,
Vaman Ashram Road, Karwar.

2. Sri. Girish Prabhakar Naik,
Age 28 years, Occ: Business,
R/o House No.1031,
Vaman Ashram Road, Karwar.

(By Sri. G.N. Jambavalikar Advocate)

IN IA NO.IV**Applicants:**
DefendantsSri. Ganesh Prabhakar Naik
and Another**- Vs -****Opponent:**
Plaintiff

Smt. Seema W/o Late Prabhakar Naik

**Details indicated vide Circular No.RJ.No.163/2023 dated
24-08-2023 by Hon'ble High Court of Karnataka**

<i>i</i>	Provision under which the application is filed	Order VIII Rule 1A CPC
<i>ii</i>	Relief sought for	Production of documents
<i>iii</i>	The date on which the application is filed	16-09-2025
<i>iv</i>	Number of the application	IA.No.vi
<i>v</i>	The date on which the objections are filed by different opponents	22-09-2025
<i>vi</i>	The date on which the orders were passed on the said application	09-10-2025

ORDER

Defendants have filed this interlocutory application under Order VIII Rule 1A CPC praying the Court to permit them to produce documents.

2. The above application is accompanied by a Memo of Facts submitted by the defendants' counsel. The memo of facts reads as under:

“I, G.N. Jambavalikar, Advocate, Karwar, do on solemn affirmation state as under.

In this case the defendant could not produce documents earlier same were missing. Now I am producing the document which are necessary in this case to prove the case of defendant. Hence this memo of facts in support of the application to produce the document.”

3. To the above application, the plaintiff has filed objection contending that the application filed in the present form at the belated stage is not maintainable in law and on facts, hence it deserves to be dismissed with costs. It is contended that the case is now posted for defendants' evidence. The application is filed without assigning any reasons. The documents produced are all not properly listed. They are not the original documents. Two files containing the documents are simply produced without sorting them properly. They contain some electronic printouts which do not bear any seal or signature. Some bank statements have seal only without signature. They are not admissible in evidence. Therefore those documents cannot be accepted or marked in evidence. Those electronic documents are produced without a

certificate under Section 65(B) of the Evidence Act. No purpose will be served by allowing the application as those documents are not relevant for the purpose of this suit. With these, the plaintiff has sought for dismissal of the application with costs.

4. Learned counsel for the plaintiff Sri. R.V. Bhat and the learned counsel for the defendants Sri. G.N. Jambavalikar have been heard.

5. I have perused the above application and entire materials on record.

6. The only point that arises for Court's consideration is:

“Are there any grounds to grant leave to the defendants for production of documents at this stage?”

7. My answer to the above point for consideration is in the '**Negative**' for the following :

REASONS

8. On perusal of the records, it is seen that the plaintiff has filed this suit for partition claiming 1/3rd share in the suit schedule properties.

9. The defendants have come up with this application at the stage of their evidence. They have filed this application after taking 3-4 adjournments for their evidence.

10. Now the defendants have filed this application seeking leave of the Court to produce some documents.

11. Order VIII Rule 1A CPC deals with production of documents by defendant. It reads as under:

“1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-- (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-

- (a) produced for the cross-examination of the plaintiff's witnesses, or
- (b) handed over to a witness merely to refresh his memory."

12. Thus it is clear that Sub-rule (1) mandates that the defendant to produce documents in his possession before the Court and file the same along with his written statement. He must list out those documents which are in his possession or cover as well as those which are not. In case the defendant does not produce any document or copy thereof along with his written statement such a document shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit. However it does not apply to a document produced for cross-examination of plaintiff's witnesses or handed over to a witness merely to refresh his memory.

13. Further, Sub-rule (3) states that a document which is not produced at the time of the written statement, shall not be received in evidence except with a leave of the Court.

14. Order XIII Rule 1 CPC specifies that the parties shall produce their original documents before settlement of issues.

15. Sub-rule (3) of Order VIII Rule 1A CPC as extracted above, no doubt provides an opportunity to the defendant to

produce documents which ought to have been produced along with written statement, with the leave of the Court.

16. The Hon'ble Apex Court in **SLP (C) No.16491 of 2019 – Sugandhi (dead) by LRs and Another Vs. P. Rajkumar**, observed as under:

“Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the courts to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.”

17. Coming to the case on hand, none of the defendants have filed any affidavit mentioning the reasons for the delay in production of the documents. However the application is accompanied by a memo of facts by their counsel wherein it is stated that the defendant could not produce documents earlier as they were missing. Therefore the reason indicated in the memo of facts cannot be accepted in the absence of the fact being supported by the affidavit of any of the defendants. It appears that there is a casual approach by the defendants in filing the present application.

The defendants are required to give plausible explanation as to what prevented them from producing those documents earlier.

18. In so far as the documents sought to be produced by the defendants, they have filed two files containing bunch of documents. On perusal of those documents, it appears that they are not relevant for the purpose of this suit.

19. It is also to be noted that though the plaintiff has raised with respect to the admissibility of those documents in question on the score that some of the documents are not properly certified by the bank concerned and some of them are not accompanied by Section 65(B) certificate etc., this Court is of the view that the question of admissibility of those documents does not arise at this stage of the matter when the documents themselves cannot be received in evidence on account of the fact that the defendants have not assigned clear and cogent reasons for the delay in production of those documents and the due procedures as prescribed by Rule 1A of Order VIII CPC.

20. Pertinently, the defendants have neither sorted out nor listed the documents properly. They have just produced two files containing bunch of documents and therefore they are not properly produced before this Court.

21. Unless the defendants give proper and plausible reasons in support of the application, the defendants cannot be permitted to produce the documents subsequently when the matter has been set down for their evidence. Therefore viewed from any angle, the defendants have not made out valid grounds for production of the documents at this stage of the matter.

22. Taking into consideration all the above, this Court is of the considered opinion that the application is liable to be rejected. Therefore I make the following :

ORDER

- i) I.A.No.IV filed by the defendants under Order VIII Rules 1-A CPC is *rejected*.
- ii) There is no order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then initialed by me and pronounced in the Open Court on the 9th day of October, 2025)

(Ganesha Padiyar U)
Addl. Senior Civil Judge,
Karwar