

ORDER ON IA.NO.V

Plaintiffs have filed this application under Order XVI Rule 1 read with Sec.151 CPC along with list of witnesses seeking to summon them to give evidence in this case.

2. In the memorandum of facts annexed to the application, the Advocate for the plaintiffs has stated that the plaintiffs want to examine two witnesses mentioned in the list, one of them is a relative of the plaintiffs and the other is their family member. Further they are important witnesses having knowledge of the facts of the case. Therefore their examination is necessary. Hence they have sought to summon them to give evidence on their behalf.

3. To this application, Advocate for defendant No.1 has filed objections stating that the plaintiffs intend to examine the witnesses in an attempt to fill up the loopholes. The application is accompanied by memo of facts which is not proper. It lacks details as to purpose of examination. Hence, it is prayed to dismiss the application with costs.

4. Having heard the arguments of learned counsel for both parties and upon perusal of the application and entire records of the case, following point emanates for Court's consideration and decision :

“Are there any grounds to condone the delay in filing list of witnesses and to summon them to give evidence in this matter?”

5. My answer to the above point for consideration is in the “***Affirmative***” for the following :

REASONS

6. On perusal of the records, it is seen that the plaintiffs have sued the defendants for the relief of declaration, injunction and possession as well. The defendants have resisted the suit by filing written statement. Issues were settled. It is at the stage of plaintiff's further evidence, the plaintiffs have come up with the present application seeking to summon the witnesses in order to give evidence on their behalf on the ground that they are important witnesses and they have knowledge in respect of the facts of the case. The contentions of defendant No.1 as raised in his objection that the present application is accompanied by memorandum of facts only and not by an affidavit of the plaintiffs appears to be too technical and cannot be approved and further the contention that the purpose of examination is not mentioned in the application cannot be accepted for the simple reason that the plaintiffs have specified in the memorandum of facts with respect to the purpose of their examination. Much more details of their examination need not be mentioned.

7. Yet another contention of the defendant No.1 is that the plaintiffs proposed to examine the witnesses just to fill up the loopholes. It cannot be readily inferred at this stage of the matter. Because the evidence to be given by those witnesses really matters. Therefore at this stage it is not possible to say that the examination of witnesses by the plaintiffs would be calculated to fill up the lacuna in the evidence that is already adduced.

8. Hence, in view of all these, the objections raised by the 1st defendant cannot be countenanced. Taking into consideration the facts and circumstances of the case, the Court is of the view that the parties must to be given fullest opportunity to prove their case and also taking

into consideration the reasons assigned by the plaintiffs in the memorandum of facts accompanying the present application which appears to be valid and reasonable, I am inclined to allow the application. Therefore, the delay in filing the list of witnesses can be condoned and it is necessary to summon them to give evidence. Hence, answering the point for consideration in the "**Affirmative**", I make the following :

ORDER

*(i) IA.No.V is **allowed**;*

(ii) In the result, list of the witnesses dated 04-06-2024 filed for the plaintiffs is taken on record condoning the delay ;

(iii) Further, the witnesses mentioned in the aforesaid list of witnesses are ordered to be summoned to give evidence in this case ; and

*(iv) Issue summons to witnesses if PF paid returnable by **08-07-2024**.*

Sd/-
Addl. Senior Civil Judge,
Karwar.