

**:: Orders on I.A.No.4::**

The defendant No.2 to 4 have filed this I.A-4 under Order 8 Rule 1A of C.P.C. to condone the delay in production of the documents.

**2.** The defendant No.3 sworn to an affidavit stating that he is seeking leave of the court to produce original Will executed by Suresh Aapu Naik i.e. his brother and husband of plaintiff in this case. As per the said Will the deceased Suresh had bequeathed his self acquired properties including suit schedule property infavour son of defendant No.4 i.e. Premamand Aapu Naik and they have already produced copy of the said Will. The beneficiary under the Will has filed original suit in O.S. No.118/2022 which is pending on the file of Civil Judge and JMFC Karwar. The original Will was produced in the said suit. Now they have obtained the Will and produced in this case. In the written statement they have taken the defence in respect of the Will. The non production of original Will earlier along with written statement is not intentional. If IA is allowed no hardship will caused to other side and prayed to allow the application.

**3.** On the other hand the plaintiff has opposed the application by

filing the written objections and denied the averments of the affidavit sworn to an IA and stated that Suresh Aapu Naik expired on 26-09-2021. The plaintiff has succeeded the properties of her husband as a legal heir. If the defendants are having any such documents they would have filed their objections before the competent authority at the time of change of name of the properties belongs to the husband of the plaintiff. The defendant No.4 has filed suit before the Civil Judge Karwar on 20-06-2022 as minor guardian of the plaintiff in O.S. No.118/2022 and the plaintiff filed the suit on 27-06-2022 before the court. The said suit came to be decreed on 23-09-2022. The defendant No.4 and other defendants were attending the court in O.S.No.118/2022. Further many times the defendants were present out side the court in O.S.No.19/2022. The plaintiff has filed FDP No.12/2022 and court has issued notice to the respondents and the present defendant appeared through their counsel on 06-01-2023 and respondent No.2 and 4 remained absent. Thereafter court has issued commission warrant through ADLR Karwar on 16-03-2023 and as per the court order and direction of the ADLR the plaintiff has paid fees towards pre mutation 11E sketch to the survey department. During all these procedure they have not

whispered anything about the present document. The suit is for partition and separate possession of joint family properties which are belongs to husband of the plaintiff. Therefore there is no necessity to prove the Will and prayed to reject the application with cost.

4. Heard on I.A.

5. The following points arise for my consideration;

1. **Whether the application filed by the defendant No.2 to 4 deserves to be allowed ?**

2. **What order ?**

6. My answer the above points is as under;

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

Point No.2:- **Is as per the final order for the following;**

### **REASONS**

7. **Point No.1**:- The plaintiff has filed suit for partition and separate possession against the defendants, when the case was posted for evidence of defendants side, the defendant No.2 to 4 filed this application stating that he is seeking leave of the court to produce original Will executed by Suresh Aapu Naik i.e. his brother and husband of plaintiff in this case. As per the said Will the

deceased Suresh had bequeathed his self acquired properties including suit schedule property infavour son of defendant No.4 i.e. Premamand Aapu Naik and they have already produced copy of the said Will. The beneficiary under the Will has filed original suit in O.S. No.118/2022 is pending on the file of Civil Judge and JMFC Karwar. The original Will was produced in the said suit. Now they have obtained the Will and produced in this case. In the written statement they have taken the defence in respect of the Will. The non production of original will earlier along with written statement is not intentional.

**8.** On the other hand the plaintiff has stated that the defendants have not whispered any thing about the Will in earlier proceedings and proving of Will in this case is not necessary.

**9.** The plaintiff has filed suit for partition and separate possession against the defendants. The defendant No.2 to 4 have filed this application to condone the delay in production of document and stated that the beneficiary of the Will is already filed suit in O.S.No.118/2022 which is pending on the file of Civil Judge and JMFC court Karwar, the defendants have produced the Will in that suit and now they have constrained to take that the original Will to

produce in this case. Further stated that they have taken contention of Will in their written statement.

**10.** The defendant No.2 to 4 have produced document and sought the leave of the court for production of document. The defendant No.2 to 4 have stated that husband of plaintiff has executed Will infavour of son of defendant No.4. The defendant No.2 to 4 sought leave of the court for production of document. The plaintiff is having every right to cross examine the witness on the said document. If the I.A is allowed on cost it will meet the ends of justice, **accordingly point No.1 is answered in Affirmative.**

**11. Point No.2 :-** In view of above discussions, I proceed to pass the following;

**ORDER**

**I.A.No.4 filed by the defendant No.2 to 4 under Order 8 Rule 1(A) of C.P.C. to condone the delay in production of the document is hereby allowed on cost of Rs.200/-.**

**Call on**

**Pri. Senior Civil Judge & CJM,  
Karwar.**

O.S.No.19/2022.