

:: ORDERS ON I.A.No.11 ::

The plaintiff has filed this I.A under Order 16 Rule 1 and 2 R/w section 151 of C.P.C. to permit the plaintiff to file list of the witnesses.

2. In the memo of facts it is stated that the plaintiff has filed suit for partition and separate possession and claim of money of the particular share of her husband. Recently the plaintiff got her documents from her family members which is handed over to the plaintiff and same is produced before the court. It is necessary to lead evidence of independent witnesses who have put signature on the same document. The other independent witnesses evidence will help the court to justify the case, therefore it is just and necessary to summon the witnesses to give the evidences and prayed to allow the application.

3. On the other hand the defendant No.2 to 4 have filed written objections denying the averments of the memo of facts and stated

that Order 16 Rule 1 and 2 governs discretionary powers of the court to issue summons to the witness as shown in the list of the witnesses filed at the proper stage. For summoning the witnesses other than those whose names did not find the place in the list of witnesses, the court can exercise its discretion under Order 16 Rule 3 which is not quoted in this case, hence IA is not maintainable. The plaintiff ought to have filed application seeking permission to examine the witnesses. The plaintiff already got examined as PW-1. The reasons assigned in the memo of facts are not good explanations to allow the application and prayed to reject the application.

4. Heard on I.A's.
5. The following points arise for my consideration;

:POINTS:

1. **Whether the applications filed by the plaintiff 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 further evidence of plaintiff side, the advocate for plaintiff filed this application stating that the plaintiff has filed suit for partition and separate possession and claim of money of the particular share of her husband. Recently the plaintiff got her documents from her family members which is handed over to the plaintiff and same is produced before the court. It is necessary to lead evidence of independent witnesses who have put signature on the same document. The other independent witnesses evidence will help the court to justify the case, therefore it is just and necessary to summon the witnesses to give the evidence.

8. Admittedly the plaintiff has filed suit for partition and separate possession against the defendants. On perusal of the order sheet it shows that the plaintiff has filed IA No.2 under Order 16 Rule 1 and 2 with list of witness and said IA came to be allowed and plaintiff got examined PW-2 and PW-3, now she has filed this application stating that recently she got the document from her family member which is handed over to her and same was produced before this

court and to prove the said document it is necessary to allow the application. The plaintiff has produced certified copy of petition filed in M.C. No.28/2025 and certified copy of compromised petition Misc No.140/2022 and stated that to prove the case it is necessary to examine the witnesses shown in the list of witnesses.

9. Further on perusal of the order sheet, it shows that already both side have led their evidence and thereafter when the case was posted for arguments on merits the plaintiff has filed IA No. 8 to 10 for reopen the case and recall of PW-1 for further chief examination and to condone the delay in production of documents. The said IAs came to be allowed and further chief examination of PW-1 recorded, when the case was posted for cross examination of PW-1 the learned counsel for the defendants submitted that he will cross examine the PW-1 simultaneously with other witnesses, but in objections opposed the IA filed by the plaintiff. Though the plaintiff already got examined two witnesses and it is stated in the application that the examination of witnesses shown in IA are necessary to prove her case. Though the court has given sufficient opportunities, but not now the plaintiff has stated that evidence of witnesses is necessary to prove her case. Hence looking to the facts

and circumstances of the case, it is opinion of the court that if one more chance is given to the plaintiff to prove her case on cost it will meet the ends of justice with a condition that the plaintiff shall proceed with the case without taking any adjournments, accordingly **Point No.1 answered in Affirmative.**

10. Point No.2:- In view of the above discussion, I proceed to pass the following;

ORDER

**I.A.No.11 filed by the plaintiff under Order
16 Rule 1 and 2 R/w section 151 of C.P.C. is
hereby allowed on cost of Rs.500/- each**

For further evidence of plaintiff side.

Call on 30-04-2026

**Pri. Senior Civil Judge & C.J.M.,
Karwar.**

