

COMMON ORDERS ON I.A.No.XIV to XVI

The plaintiff has filed I.A.No.XIV U/s.151 of CPC and I.A.NO. XV to recall and re-open the stage of plaintiff evidence and I.A.NO. XVI U/o.16 Rule 1 r/w section 151 of CPC seeking permission to examine the witnesses (defendant No.1, defendant No.7 and 8) as mentioned in the application.

2. The reasons ventilated by the plaintiff in the affidavits accompanying to the applications are that, the suit is filed by the plaintiff seeking for partition and the defendant No.3 has made a false claim in respect of the property purchased and developed by the plaintiff even though he is very well aware of the same and the defendant No.3 and 6 have been taking the rental amount from defendant No.7 to 9 who are the tenants and not giving single paisa to this plaintiff and during the course of evidence of defendant No.3 he has stated that the properties are looking after by the defendant No.1, mother and not produced any document regarding the income of the properties and in respect of the rent deposited by the defendant No.7 to 9 in respect of suit schedule B properties and the said rental amount has been using by the defendant No.1 and 3 only since 2012 without giving the same to this plaintiff which has been stated during his cross-examination. The plaintiff is entitled for the share in all the properties including the rental amount and the tenants are arrayed as defendant No.7 to 9 and it came to the knowledge of the plaintiff that defendant No.3 and 6 prevented the defendant No.1 from stepping into the

witness box and it is essential to ascertain as to how much the defendant No.7 to 9 are paying the rents and the examination of the defendant No.1, 7 and 8 are very much essential in order to ascertain these matters and the plaintiff was expecting that the defendants may examine defendant No.1 but defendant No.3 and 6 prevented the defendant No.1 from giving evidence. Their evidence are very much essential, hence prays to allow the said applications and sought to issue summons to the defendant No.1, 7 and 8 as sought for under I.A.NO.XVI.

3. Per contra, the objections came to be filed on behalf of the defendant No.1 to 6 refuting the said application as not maintainable either in law or in facts and liable to be dismissed. It is contended that the defendant No.1 to 6 have taken all the contentions in their written statement itself regarding the rent aspect mentioned in the plaint and the plaintiff represented by an eminent advocate should have taken all care to produce his evidence at the very instant of opportunity given to him. Further contended that the said applications are filed only to drag and delay the matter and in order to fill up the loopholes in his case brought during cross-examination of P.W.1, he recalled and lead further evidence producing irrelevant documents and these acts of the plaintiff goes to show that plaintiff has not conducting the case with clean hands. Further stated that defendant No.1 who is a mother is aged more than 86 years and has been suffering from mental dementia and the plaintiff realising this aspect intending to obtain unfair advantage and other witness sought

to be examined is a tenant and the fact of tenancy is admitted by defendants also, as such there is no need to examine him and since the suit is for partition, there is ample opportunity to arrive at the mesne profits during the time of final decree proceedings and it can only be adjudicated during FDP, as such the examination of these witnesses are not required. On all these grounds, prays to dismiss the said applications with costs.

4. Heard arguments.

5. Perused the case materials placed on record.

6. After going through the applications with affidavits and objection, the points arise for my consideration are ;

1. Whether the plaintiff has made out grounds to allow the applications?

2. What order ?

7. My answer to the above points are as under:

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

Point No.2 : As per the final order for the following:

REASONS

8. **Point No.1:-** The plaintiff in the present case intends to examine the defendant No.1 who is the mother and defendant

No. 7 and 8 who are tenants of the suit schedule B properties in order to ascertain as to how much the defendant No.1 is receiving the rent from tenants and how much the defendant No.7 and 8 are giving the amount towards rent in respect of suit schedule 'B' properties.

9. Admittedly, the present suit is filed by the plaintiff against the defendants seeking the relief of partition and separate possession of suit schedule properties and on the other hand, the defendant No.1 to 6 have also sought for counter claim seeking the partition in the properties shown in the written statement. It is alleged in the plaint that defendant No.7 to 9 are the tenants of suit schedule B properties and defendant No.1, 3 and 6 are taking the rental amount without giving single paisa to the plaintiff. He has also sought for his share in the rental amount giving by defendant No.7 to 9 who are the tenants. It is also elicited in the cross-examination of defendant No.3 who has been examined as D.W.1 that it is the defendant No.1 who is looking after the shop business. Under such circumstances, examining defendant No.1 is essential for the plaintiff in order to elicit the matter under controversy as to how much she has been receiving the rent in respect of suit schedule B properties and so far as examination of defendant No.7 and 8 are concerned, no doubt there is no dispute in respect of the fact of them being tenants but if they are examined, then their evidence may assist the Court in arriving to the better conclusion regarding the aspect of rental amount and they are the best and competent witnesses to depose before

the Court as to how much rent they are paying and to whom they are giving rental amount. Hence, this Court is of the considered opinion that examination of the defendant No.1, 7 and 8 are essential for proper adjudication of the case. No doubt, there is certainly a delay caused by the plaintiff in filing the list of witnesses and also filing the applications, but it is not a sole ground to brush aside the legitimate claim of the plaintiff. The delay can be suitably compensated in terms of costs. If these applications are rejected, the plaintiff will be deprived with an opportunity to prove his case. The technicalities must not become stumble stone in reaching the ends of justice. At this juncture this court is of the opinion that,if the applications filed by the plaintiff are allowed by imposing the costs, then the interest of both the parties will be protected. . In the touchstone of reasons assigned above, Point No.1 is answered in the **Affirmative**.

10. Point No.2 : In view of the findings on Point No.1, **this Court proceeds to pass the following:**

ORDER

The I.A.No.XIV to XVI filed by the plaintiff is hereby allowed on cost of Rs.500/-.

The plaintiff is hereby permitted to examine witnesses as mentioned in the witness list.

Since I.A.NO.XIV to XVI are allowed providing opportunity to the plaintiff to lead his further evidence, orders on I.A.NO.XIII filed by the defendant No.1 to 6 is deferred until the further evidence of the plaintiff is closed.

Issue witness summons to the witnesses mentioned in the I.A.NO. XVI if PF paid.

Sd/-

C/c Civil Judge, Ankola.