

**COMMON ORDER ON I.A.NO.XI AND XII**

I	Provision under which the applications are filed	I.A.No.XI-filed U/O.VIII Rule 1-A(3) R/w Sec.151 of CPC.  I.A.No.XII-filed U/O.XVI Rule 1 and 2 R/w Sec.151 of CPC.
II	Relief sought for	I.A.No.XI- Production of documents after condoning delay.  I.A.No.XII- issue summons to the witnesses mentioned in the application.
III	The date on which the applications are filed.	31-08-2024
IV	Number of applications.	I.A.No.XI and XII
V	The date on which the objection filed by opponent.	02-09-2024 objection filed to the I.A No.XII and submitted no objection to I.A XI
VI	The date of which the order passed on the application.	03-09-2024

The Applicant/ defendant has filed I.A.No.XI praying to permit him to produce the documents by

condoning delay and the I.A No.XII is filed praying to summon the witnesses to give evidence.

2. The applicant/ defendant has filed separate affidavits to the above applications. In the affidavit annexed to the I.A.No.XI, the defendant contended that, the application filed by the defendant in O.S. No. 23/2017, the Taluk Surveyor was appointed as the court commissioner, and a detail report is filed by the Taluk Surveyor in O.S. No. 23/2017 and a detail measurement of the location of the schedule building is shown in the said report filed by the Taluk Surveyor. Therefore, the above said report is also an important document to prove the issue in dispute in the above case. The delay in production of the above said documents is neither intentional nor malafide, the Certified copy of the above said documents obtained by him was misplaced and the same was traced by him only a few days back, and the same is produced in the above case. The delay in production of the said documents is neither intentional nor malafide, but because of the said reasons.

3. In the affidavit annexed to the I.A.No.XII the defendant contended that, the suit shop rooms are constructed by him in the vacant Government land long back and the claim of the plaintiff over the said

shops room in the Government Land is untenable and the plaintiff has no status to claim the said shop rooms located in the land of the government. The suit schedule premises are not located in plot No. 223 of Sy. No.88 of Venkatapur Village as claimed by the plaintiff , in fact the suit premises are standing in the land belonging to the Government of Karnataka. The plaintiff has no manner of right or title over the said Government land, nor he has ever been in possession of the said Government land or any portion thereof. The suit shops are constructed by the applicant and it is occupied by the applicant as its owner. The suit shop are constructed by them in the vacant Government land long back and claim of the plaintiff over the said shop rooms located in the Government land is untenable. The plaintiff has no status to claim the said shop rooms located in the land of the Government. There is no relationship of land lord and tenant between the plaintiff and the defendant. The terms and conditions narrated in the plaint of the said imaginary lease are false, misleading and also baseless. This defendant did not execute any lease deed or agreement infavour of the plaintiff much less on 01-01-2014. The deed dated 01-01-2014 relied upon by the plaintiff is obviously forged, fabricated or

manipulated, when the tenancy claimed itself is false and imaginary, there is no question of its renewal or termination. The suit is based on suspicious notices, which is untenable and deserves to be rejected. Therefore, under the circumstances we filed an applications for appointment court commissioner to find out the location of the said shops, and the said application was rejected by this court. Therefore, it is necessary to prove the construction of the said building over the land belonging to the Government of Karnataka i.e., Sy. No. 88/231 by way of examining the independent witness to prove the same. Hence, prays to allow the applications.

4. On the other hand the plaintiff has filed objection to the above I.A No. XII application and contended that, the application is false, frivolous and unsustainable in law and on merits. The application is filed just to drag the proceedings of the case and to delay the proceedings. No purpose will be served to the defendant by getting allowing the above application. The defendant neither made any counterclaim nor raised any issue to proved by him. Hence, the witnesses sought to be summoned are unnecessary and filed the application with an ulterior motive to drag the proceedings. The defendant has

not made any whisper nor any grounds in the application to summon the large number of witnesses in the above case. Hence, the alleged averments in the affidavit are not sufficient to summon the large number of witness, cited in the application. Without giving proper reasons, the defendant cannot summon the large number of witnesses in the above case. At any event the witness serial No.4 and 5 are the individual personnel and as such the defendant can easily bring them before this court without any summons. The other witnesses are Government witnesses and as such they cannot summon blanket without showing the proper reasons to summon them. Under the circumstances, the defendant cannot summon the witnesses according to her whims and fancy. The defendant unnecessarily sought witnesses in the above case, to cause unnecessary harassment to the plaintiff. That no grounds are made out either in the application or in the affidavit to summon the large number of witnesses in the above case. The alleged grounds in the application as well as in the affidavit are false and are denied. The contentions that, the suit schedule building is constructed by the family of the defendant in the Government land and that the plaintiff has no status to claim the suit building as

contended are all false and are denied. The plaint averments may be read as part and parcel of this counter. All other averments in the application and in the affidavit are denied as false. Hence, prays to dismiss the application with costs.

5. Heard the counsels appearing for the parties. Perused the I.As, affidavits and objection.

6. Under the circumstances, following point arises for my consideration:-

1. *Whether the applicant/ defendant has made out sufficient grounds to allow the I.A.No.XI?*
2. *Whether the applicant/ defendant has made out sufficient grounds to allow the I.A.No. XII?*
3. *What order?*

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

POINT No.1: **Affirmative**

POINT No.2: **Partly Affirmative**

POINT No.3: As per the order for following:

**REASONS**

8.**Point No.1 and 2:-** In order to avoid repetition of facts, these points are taken for discussion together. The plaintiff has filed this suit for eviction of schedule

premises against the defendant. The defendant has filed above applications at the stage of further defendant side evidence.

9. In order to adjudicate the dispute between the parties the document sought to be produced as stated in the I.A No.XI is necessary. Hence, same is permitted to produce.

10. Further with regard to the witnesses sought to be summoned as per I.A No.XII, out of which the witness No.1 to 3 are the Government Officials of Survey department. In the application it is stated that, in order to prove the schedule premise is in the Government land, the evidence of witness No.1 to 5 is necessary. But the plaintiff has filed this suit for eviction of the schedule premises and burden is on the plaintiff to prove his case. The witness No. 1 to 3 are nowhere connected to the issue in this suit. The defence of the defendant can be proved by producing the necessary document which is in the office of witness No.1 to 3. Even if this court summons the witness No. 1 to 3, they will depose on the basis of documents. Hence, such documents can be produced by the defendant. It is not the case of the defendant that, he has not got such document from the office of the witness No. 1 to 3. Hence, in order to adjudicate

the dispute in the case on the hand, the evidence of witness No. 1 to 3 is not necessary. However, the witness No. 4 and 5 are the private witnesses and they can be examined by the defendant in support of his defence. Accordingly, by these observations, I proceed to answer the point No. 1 in **Affirmative** and Point No.2 in **Partly Affirmative**

11. **Point No.3:-** For the discussion made in the point No. 1 and 2, I proceed to pass the following:

**ORDER**

The I.A.No.XI filed by the applicant/ defendant is hereby allowed.

The I.A.No.XII filed by the applicant/defendant is partly allowed.

The defendant is permitted to examine witness No.4 and 5 as mentioned in the I.A No.XII.

It is made clear that whatever discussion made by this court that opinion found are only for the purpose of disposal of this application and they are on the basis of the materials on the record. Therefore, the parties shall not take the benefit

from said observations during the final disposal of this case.

The defendant is directed to keep the witnesses present on the next hearing date.

For further defendant side evidence by 13-09-2024.

**Sd/-**

Addl. Civil Judge and  
JMFC, Bhatkal.