

ORDERS ON I.A.No.XIV
(filed U/O 16 R 3 R/w Sec. 151 OF C.P.C)

1. The plaintiff has filed present application under Order XVI Rule 3 of CPC with a prayer to condone the delay in filing the list of witnesses and permit him to file the list of witnesses in the interest of justice and equity.
2. In the annexed affidavit to present application, the applicant has stated that he is the GPA holder of the plaintiff and he is filing the list of witnesses along with this application which he is intended to examine in his favour in this suit. The witnesses who are listed in the witness list are the witnesses of agreement for sale who have attested the said agreement of sale. However due to oversight the list was not filed earlier at the time of filing of the present suit. However, the delay caused was not intentional one and a deliberate one but has bona fide reasons. The present suit is posted for recording further plaintiff's evidence. An examination of the witnesses mentioned in the list of witnesses is very much necessary for the plaintiff to prove his case. If the present application is not allowed, great hardship and inconvenience will be caused to the plaintiff. On the contrary, no hardship or harm will be caused to other side. On these grounds, the applicant prays to allow the present application and condone the delay by taking the list of witnesses on record.

3. Per contra, counsel for defendant no. 4 filed objections to the present application and contended that, the plaintiff has taken more than 1 year for his examination in chief and intentionally has not filed the list of witnesses earlier. The plaintiff has got complete knowledge and he is watching the proceedings. Therefore, it is the duty of the plaintiff to file list of witnesses immediately after framing of issues or at least before beginning of the recording of evidence. Therefore, the application filed by the plaintiff is not genuine and not tenable on any ground. The evidence of the plaintiff has begun on 14.09.2023 and she has taken more than one and half year to file the present application. On these grounds, counsel for defendant no. 4 prayed to reject the present application.
4. Heard and perused the materials available on record.
5. The following points that arise for my consideration are:-
 1. Whether the application deserved to be allowed ?
 2. What Order?
6. My answer to the above points are as under:-

Point No.1 :- In the Affirmative.

**Point No. 2 :- As per final order
For the following:**

REASONS

7. **POINT NO.1** :- The plaintiff has filed the present suit for the relief of declaration that the seal deed dated 07.02.2006 is void and not binding upon the present plaintiff and directing defendant no. 1 and defendant no. 2 to execute regular sale deed in favour of this plaintiff with respect to suit property.
8. The plaintiff has pleaded that defendant no. 1 and 2 and their mother had agreed to sell the suit property to the plaintiff for sale consideration amount of ₹ 15,000 which was actually paid by the plaintiff to the defendants. Despite that defendant no. 1 and 2 failed to execute regular sale deed in favour of the plaintiff with respect to suit property as per the said agreement. However on 07.02.2006 defendant no. 1 and 2 instead of executing regular sale deed in favour of plaintiff has executed the same in favour of defendant no. 3.
9. It is important here to note that earlier this suit was decreed by my predecessor in office. But it is defendant no. 3 who has challenged the said decree before first appellate court in RA No.83-2017 on the file of Hon'ble Senior Civil Judge, Haliyal. The Hon'ble first appellate court has remanded the matter back to this court for fresh disposal by giving an opportunity to defendant no. 3 to file his written statement and contest the same.

Therefore in the year 2017 this file got reopened as per the order of first appellate court in RA No. 83 of 2017.

10. The order sheet further reveals that even though defendant no. 3 had appealed against the judgment and decree passed by this court, it took him to serve the notice to appear before this court and contest the matter. It is true that the suit is pending for further plaintiff's evidence after filing of written statement by the defendant no. 3. At this stage the plaintiff has come up with the present application with a prayer to permit him to file the list of witnesses. As per the plaintiff, the witnesses mentioned in the list of witnesses are none other than the attesting witnesses to the agreement of sale alleged is to be executed by defendant no. 1 and 2 along with his mother in favour of the present plaintiff with respect to suit property.
11. The records further depict that earlier this suit was decreed and only PW1 was examined. Now it is the case of the plaintiff that at this stage they want to examine the attesting witnesses to the agreement of sale. It is true that there is a delay in filing the present application. But however the delay cannot be only, attributable to the plaintiff alone because the records further reveal that the delay is caused by defendant no. 3 and other parties also. However, I find it necessary to allow the present application in order to give an

opportunity to the plaintiff to prove his case. Moreover, the defendants will get an opportunity to cross examine the witnesses examined by the plaintiff. Therefore, no hardship and injustice will be caused to the defendant no. 4. On the other hand, if the present application is not allowed and list of witness is not taken on records by condoning the delay, it may lead to multiplicity of proceedings and delay and also may not result in effective adjudication. With these observations, I am inclined to allow present application by imposing cost upon the plaintiff for causing delay. Therefore I answer Point No.1 in **Affirmative**.

12. **POINT NO. 2:-** In view of findings and reasons to point No. 1, I proceed to pass following:

ORDER

I.A.No.XIV filed by the Plaintiff U/O. 16 R.3 R/w Sec.151 is hereby **ALLOWED** on cost of **Rs.500/- payable to TLSC, Dandeli.**

For Further Plaintiff Evidence.

C/o: 14.01.2026.

**Sd/-
Civil Judge & J.M.F.C.
Dandeli.**