

KAUK510002442013



IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL

AT: HALIYAL, UTTARA KANNADA

Dated this 8th day of June, 2026

PRESENT

Smt. Geeta. B.A.LL.B (Hon's) LL.M.,
Civil Judge and JMFC, Haliyal

ORIGINAL SUIT NO.64/2013

BETWEEN:

Smt. Savitri B Pattekar

.....Plaintiff

(By Sri. S.G.H., Advocate)

AND:

Sri. S M Mule.

.....Defendant

(Deft By Sri. P.R.D, Advocate)

I.A.No.XIV

Applicant/Pliff : Smt. Savitri B Pattekar.

-Vs.-

Opponent/Deft : Sri. S M Mule.

ORDER ON I.A.No.XIV

The plaintiff filed I.A No.XIV under Order 16 Rule 1 and 2 R/w 151 of C.P.C., praying to permit the plaintiff to examine the witnesses described below in the interest of justice and equity.

Name and address of the witnesses

1. Shri. C.V.Nuchambli, Occ: Advocate. R/o: Near Government Hospital, Haliyal.
2. Shri. Neelkant H Bobati, R/o: Guttegeri Galli, Haliyal.
3. Shri. Santosh G.Habbu, Occ: Advocate, R/o: Maruti Galli, Haliyal.

2. In the memo of facts counsel for plaintiff stated that, the matter is posted for further evidence of plaintiff and plaintiff is submitting list of witnesses described. The examination of these witnesses is essential to decide the case on merits. Due to COVID-19 and SOP, it was not possible for the plaintiff to furnish list of witnesses therefore, the plaintiff is submitting the same now. The delay in submitting list of witnesses is not intentional. The plaintiff undertaken to keep present the witnesses at the time of hearing. With these contentions counsel for the plaintiff prayed to condone the delay and permit him to examine the witnesses shown in the list.

3. The counsel for defendants filed objection to I.A contending that the application is not accompanied by the affidavit of the plaintiff as such, the application is not according to law and liable to be dismissed. The counsel for plaintiff is not stated in memo of facts that how and in what manner witnesses are relevant to this suit. Further the witness by name Sri.Santosh G Habbu was representing the case till 13-02-2026. Therefore he cannot be examined as witnesses. The witnesses shown in the application are not relevant witnesses to this suit. Therefore the plaintiff cannot be permitted to examine them in her favour. With these contentions the defendants prayed to reject the application.

4. Heard both counsels and perused the records.

5. Now the points that arise for consideration are as under;

1. Whether the counsel for the plaintiff has made out grounds to condone the delay and examine witnesses shown in the list?

2. What order?

6. Answers on above points are as follows;

Point No.1 : In the Affirmative

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

REASONS

7. **POINT NO.1:-** The plaintiff filed this suit for the relief of cancellation of sale deed dated 11-06-2010 in respect of suit property and now the case is posted for further plaintiff's evidence. At this stage the counsel for plaintiff filed this application along with list of witnesses praying to permit her to examine the witnesses shown in the list in her favour. The defendants objected to the application contending that one of the witnesses shown in the list was representing the case and he himself filed this suit, as such he cannot be examined on behalf of plaintiff. Further other witnesses shown in the list are not relevant and material to prove this case.

8. Perused the records. It is true that witness No.3 by name Sri. Santosh G. Habbu filed this suit and he was representing plaintiff in this case. Thereafter Advocate Sri.B.N.P filed vakalath for plaintiff. Now the plaintiff intends to examine her previous counsel to prove her contentions in the plaint. Further the plaintiff intends to examine other two witnesses to prove her case. Under these circumstances, in order to provide fair opportunity to plaintiff, she has to be permitted to examine said witnesses on her behalf. It is the contention of defendants that evidence of witnesses shown in the list is not material and they are not relevant witnesses. At this stage of the suit, court has to see whether delay in filing the application and producing list of witnesses has to be

condoned or not. Whether the evidence of witnesses are material or not, has to be looked into at the time of appreciation of evidence. At this stage, court cannot form opinion and deny the fair opportunity to plaintiff to prove her case. Therefore, plaintiff has to be permitted to examine witnesses shown in the list.

9. Further it is the contention of the defendants that one of the witnesses shown in the list was representing the plaintiff in this suit, therefore his evidence cannot be recorded. It is settled law that, there is no bar to examine the advocate who represented the party in any suit on behalf of said party. Therefore though the witness No.3 Sri.Santosh G Habbu represented the plaintiff in this case, if plaintiff intends to examine him on her behalf his evidence can be recorded on behalf of the plaintiff. Therefore at this stage plaintiff has made out grounds to condone the delay and permit her to examine witnesses shown in the list. Hence, **I answer Point No.1 in the Affirmative.**

10. **POINT NO.2:-** In view of the discussion on Point No.1 and for the reasons stated therein, I proceed to pass the following;

ORDER

**I.A.No.XIV filed by the plaintiff
under Order 16 Rule 1 R/w Sec.151**

of C.P.C., is hereby allowed with cost of Rs.300/-.

Plaintiff is permitted to examine witnesses shown in the list.

On perusal of the records, this case is of the year 2013, therefore plaintiff is directed to examine witnesses shown in the list without any adjournments and defendants are directed to examine the witnesses without any delay.

(Dictated to the Stenographer, transcribed & typed by him, then corrected, signed and pronounced by me in the Open Court on this the **8th day June, 2026**)

(GEETA)
Civil Judge and JMFC.,
Haliyal.