

KAUK510002482016



IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL

AT: HALIYAL, UTTARA KANNADA

Dated this 5th day of June, 2026

PRESENT

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

ORIGINAL SUIT NO.59/2016

BETWEEN:

1. Shri. Chidanand Ramchandra Revankar,
Age: 77 years, Occ: Agriculture,
R/o. Vimalash Nivas, Ambewadi Gaon Thana area,
Mavalangi Road, Dandeli - 581 325.

.....Plaintiff

(By Sri. P.B.A., Advocate)

AND:

1. Shri. Chandru Venkobi Kokane,
Age: Major, Occ: Business & Contractor,
R/o. Subhash Nagar, Dandeli - 581 325.

...Defendants

(D-1 & 2 By Sri. S.K.S, Advocate)

(D-3, 5 and 6 Exparte)

(D-4 Dead)

(D-7 By Sri. M.C.H, Advocate)

I.A.No.XXXIII

Applicant/Plaintiff : Shri. Chidanand Ramchandra Revankar.

-Vs.-

**Opponents/Defts :Shri. Chandru Venkobi Kokane,
and others**

ORDER ON I.A.No.XXXIII

The plaintiff filed I.A No.XXXIII under Order 16 Rule 1 and 2 R/w 151 of C.P.C., praying to permit the plaintiff to file list of witnesses by condoning delay, in the interest of justice and equity.

2. In the affidavit plaintiff stated that, this suit is posted for further plaintiff's evidence. Hence he is submitting list of witnesses, who are relevant and material witnesses. The evidence of said witnesses is necessary. The delay in submitting list of witnesses is not deliberate or intentional. With these contentions the plaintiff prayed to allow the application.

3. The counsel for defendants filed objection to the application contending that application is filed at very belated stage as an after thought and same is not permissible in law. The plaintiff being GPA holder has led his evidence on 28-02-2019. Thereafter as a GPA holder, this plaintiff has examined as PW-2, he was recalled two times and filed documents, which was allowed by the court. The plaintiff has not bothered

to file list of witnesses, in spite of sufficient opportunities and filed this application at belated stage. The plaintiff was required to file list of witnesses before commencement of his evidence which is not done by the plaintiff. He who have filed list of witnesses at least during cross examination of PW-1 enabling the defendants to take proper defense while cross-examining PW-1. The plaintiff has not filed list of witnesses with mala-fide intention.

4. It is contended that instant suit is for permanent injunction, the plaintiff has produced documents and got marked Ex.P.29, 30, 44 to 46 and 52. The suit property is not a building, as such examination of witness No.2 i.e., PDO is not helpful to the plaintiff. The plaintiff intends to examine witness No.2 with respect to building and its permission, the suit property is not a building, as such examination of PDO is no of use. Admittedly the suit property is not a building, hence any document produced pertaining to building and examination of witness No.3 is of no of use. The Ex.P.4 is a sketch which is self-created document and also said document is not an official document, which cannot be relied by the plaintiff. Further, the sketch is not drawn on the basis of any order of the Government. Hence examination of witness No.3 is nothing to do with the suit property. The plaintiff also produced a map prepared by court commissioner in O.S No.10/2001, which was marked as Ex.P.5, wherein the road is not in existence. Therefore it is clear that Ex.P.5 is fabricated sketch prepared to

suite the claim of plaintiff, hence examination of witnesses is not permissible and is of no use.

5. It is further contended that, plaintiff intends to examine RFO, Dandeli. However the plaintiff has already produced the letter alleged to have been issued by Forest Department and same was marked Ex.P.48. Further there is no pleading of any nature in respect of Forest Department. Therefore when the document is marked there is no necessity to examine RFO or it is not helpful for the plaintiff. The plaintiff intends to examine Tahashildar, Dandeli to produce representation and to give evidence regarding the letter which was issued by plaintiff as such, he can obtain certified copy of the same and produce it before the court. The order referred by plaintiff shows that, it is a Government circular and plaintiff is at liberty to obtain certified copy of the same and produce in this suit. Therefore it is absolutely not necessary to issue summons to Tahashildar to produce the document. The plaintiff can obtain certified copies of said document and produce the same before the court. Further the alleged circular dated 20-10-2023 is of the year 2023 and this suit was filed in the year 2016 for the relief of bare injunction, as such examination of Tahashildar is absolutely not necessary. The plaintiff intends to examine court commissioner, who submitted report in O.S No.10/2001 and the said court commissioner report is produced and got marked by the plaintiff as Ex.P.5. The defendants were not parties to O.S.No.10/2001 and this suit filed by the plaintiff is

totally different, as such court commissioner report is not relevant to this suit. Therefore the list produced by the plaintiff is at belated stage is nothing but to drag on the matter. With these contentions counsel for defendants prayed to reject the application.

6. Heard both counsels and perused records.

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

1. Whether the plaintiff has made out grounds to condone the delay and permit him to file list of witnesses?

2. What order?

8. Answers on above points are as follows;

Point No.1 : In the Negative

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

REASONS

9. **POINT NO.1:-** The plaintiff filed this suit for the relief of permanent injunction against the defendants contending that the suit property is an existing road from the agricultural land bearing Block No.1/3 measuring 05 acres of Ambewadi village, leading to Moulangi gountana road situated towards eastern side of agricultural land bearing Block No.1/1, 1/2, 1/4, 1/5, 1/6 and 1/7. It is contended that plaintiff is the

owner of Block No.1/3 measuring 05 acres of Ambewadi gountana, he has purchased it from Abdulkhadar Mohammadali Nawab and Mohammadibrahim Mohammadali Nawab through a registered sale deed dated 13.05.1985 and 18.10.1985 and it was numbered as Block No.1/3. One Shri. Venkataraman Mukund Kamat also purchased 3 acres from Abdulkhadar Mohammadali Nawab and Mohammadibrahim Mohammadali Nawab through a registered sale deed dated 19.12.1985 and it is numbered as Block No. 1/1, which was subsequently purchased by the defendant No.1. The existing road leading from the land of plaintiff to Moulangi gountana road is on the eastern side of land of defendants. The said road is in existence prior to the year 1985, even before purchase of suit land by the plaintiff. The defendant No.1 & 2 being brothers are holding bricks manufacturing unit in their land under name and style Shri. Thirumala Bricks Industries. The defendants are storing stone powder, fly ash, chunna, sand and other materials required for bricks business on the suit road and causing obstruction in use and enjoyment of the said road by the plaintiff and his family members. The defendants are also parking tractors, trucks and other vehicles on the concerned road and thereby causing interference in the enjoyment of said road by the plaintiff and his family members. With this plaintiff filed this suit seeking for permanent injunction.

10. Now the evidence of PW-1 and 2 is completed and the matter is posted for further plaintiff's evidence. At this stage, plaintiff filed this application seeking permission to file list of witnesses. The defendants strongly objected to the application contending that the application filed by the plaintiff is at highly belated stage which cannot be allowed. The defendants also contended that the documents on which the plaintiff intends to examine witnesses have already been produced by the plaintiff and got marked on his behalf. Therefore examination of witnesses shown in the list is not material.

11. On perusal of records, it is admitted fact that suit is one for bare injunction restraining the defendants from obstructing the peaceful possession and enjoyment of use of road by the plaintiff. Under these circumstances, the burden is on the plaintiff to prove the existence of road as alleged in the plaint and interference by the defendants. To prove the same plaintiff and his GPA holder have been examined as PW-1 & 2 and got marked in all 84 documents. Now the plaintiff intends to examine witnesses i.e., PDO, Gram Panchyath, Ambewadi to depose regarding building permission and approved plan. In the application itself the plaintiff stated that he intends to examine PDO to depose regarding Ex.P.45 and 46, it shows that the documents on which plaintiff intends examine PDO are already produced by the plaintiff, under these circumstances, examination of PDO, Ambewadi Gram Panchyath is not

material and serve no purpose. Further the plaintiff intends to examine witness No.3 Smt. Vrushali and her husband Sri. Deepak Savant, to depose regarding layout plans of Block No.1/3 of Ambewadi village. It is admitted fact, that suit is filed with respect to existence of road as alleged by the plaintiff and the suit is not with respect to building constructed at Block No.1/3. Therefore examination of architectures i.e., Vrushali Savant and Deepak Savant is not material. Moreover the sketch map of the building is already marked Ex.P.4 & 5. Therefore, examination of said witnesses is not material and serves no purpose. Further, the plaintiff intends to examine RFO, Dandeli to produce representation given by him on 07-05-2016 concerning to Ambewadi Block No.1/3. However said document is already marked as Ex.P.48, therefore examination of RFO is with respect to Ex.P.48 is of no use and material. The plaintiff also intends to examine Tahashildar, Dandeli to produce representation given by GPA holder of plaintiff and also with respect to Government circular dated 20-10-2023. If the plaintiff intends to examine regarding representation given by him, he could have produce copy of said document before the court. Further the plaintiff can obtain certified copy of Government circular dated 20-10-2023 and produce it before the court. Therefore examination of Tahashildar, Dandeli is not material. Further the plaintiff intends to examine court commissioner appointed in O.S No.10/2001 with respect to the report submitted by him, however plaintiff has already produced said court commissioner report before the court.

Therefore for production and examination of court commissioner report with respect to said document is not material. Moreover the defendants are not parties to O.S No.10/2001, under these circumstances examination of court commissioner on report submitted by him in O.S No.10/2001 will not assist the plaintiff to prove his case. Further the plaintiff intends to examine one Sri.Manjunath Shetty, however he has not stated for what purpose he intends to examine said witness. Therefore the application filed by the plaintiff and the reasons stated in the affidavit are vague, hence, application cannot be allowed.

12. Further, on perusal of documents, this suit filed in the year 2016 for the relief of permanent injunction, already 10 years has been lapsed and till date this suit is at the stage of recording of evidence of plaintiff's witnesses. If the plaintiff is permitted to examine the witnesses shown in the list, that too, when their evidence is not material to prove the plaintiff's contention, certainly, it will cause undue delay in disposal of the suit. Further the documents on which plaintiff intends to said witnesses have already been produced by him. Therefore examination of proposed witnesses will not assist the plaintiff to prove the case. Under these circumstances the plaintiff has not made out grounds to permit him to examine the witnesses shown in the list. Hence, at this stage plaintiff has not made out grounds to allow the application. Accordingly, **I answer Point No.1 in the Negative.**

13. 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.XXXIII filed by the plaintiff
under Order 16 Rule 1 and 2 R/w
Sec.151 of C.P.C., is hereby rejected
with cost of Rs.300/-.**

(Dictated to the Stenographer, transcribed & typed by him, then corrected, signed and pronounced by me in the Open Court on this the **5th day June, 2026**)

**(GEETA)
Civil Judge and JMFC.,
Haliyal**