

ORDER ON I.A.NOS. VI and VII

The applicant/plaintiff No.1 has filed the I.A. No.VI under Order 7 rule 14 of CPC praying this Court to receive the document produced along with this application and I.A.No. VII under Order 18 rule 17 read with section 151 of CPC praying this Court to reopen the case for further evidence of the PW1.

2. The applications are supported with the affidavits of the plaintiff No.1, wherein he deposed that the suit schedule properties are his and defendants ancestral properties and till today, the partition is not entered with regard the suit schedule properties and while cross examination, the learned advocate for the defendants have contended that the plaintiffs are not the brothers of defendant No.8 and the plaintiffs are not the legal heirs of Rehamatunissa. Therefore, now he is producing documents in that regard. If this application is not allowed, then it will cause irreparable injury to him. Hence, he filed these applications.

3. Contrary to this, the defendant Nos. 2 and 8 have filed their objection and contended that the application is not maintainable. Further they have contended

that in the applications, the reasons for delay in producing those documents are not stated and when the applicants have obtained those documents are also not stated. These applications were filed only with an intention to fill up lacuna in the case. Further it is contended that under Order 18 rule 17 of CPC, the Court has to call for the records and the applicants are not supposed to file application in that regard. Order 18 rule 17A of CPC has been repealed from the CPC. These applications are filed only with an intention to harass the defendants. Hence, they prayed to dismiss the applications.

4. I have heard the learned advocate for the plaintiffs and the learned advocates for the defendants.

5. The suit on hand for the relief of declaration and partition. I have perused the entire pleadings and cross examination of the PW1. In the cross examination of the PW1, some suggestions with regards the relationship of the plaintiffs with 8 defendant and Rehamatunissa were put forth before the PW1. So for that reason alone the present applications were filed by the plaintiffs in order to show the their

relationship with the defendant No.8 and Rehamatunissa.

6. In the objections, the learned advocate for the defendant Nos. 2 and 8 has contended that these applications were filed only with an intention to fill up lacuna arose in the cross examination of the PW1. On looking into the nature of the suit and stage of the suit, the question of filling up lacuna does not arise. Because, the present applications were filed when the case was posted for further plaintiffs' evidence and this stage is still in the primary stage. Therefore, the ground urged in the objection is not sustained.

7. Another ground urged in the objection that the wrong provision of law were incorporated. It is settled principle of law that mere mentioning wrong provisions is not a ground to reject the applications.

8. Further as noted supra, the suit is in primary stage and the grounds urged in the applications are proper to allow the applications. Looking into the reason assigned in the applications, the applications filed by the plaintiffs deserve to be allowed. However, it will not cause any injury to the defendants. However, there is delay in filing

the document and the reason mentioned in the application itself is sufficient to condone the delay. With this observations, I proceed to pass the following;

ORDER

I.A.Nos. VI and VII filed by the plaintiff No.1 is hereby allowed subjected to payment of cost of Rs.500/-.

The cost must be paid to defendant Nos. 2 and 8 and the payment of cost is condition precedent.

Case is reopened for further chief examination of the PW1.

Call on 20/03/2024.

**Prl.C.J & JMFC,
Honnavar.**