

COMMON ORDERS ON I.A.NO.XXXVII AND XXXVIII
FILED BY PLAINTIFF UNDER ORDER XVII RULE 11 AND
SECTIONS 151 OF C.P.C.

These common orders arising out of an applications filed by plaintiff with a prayer to re-open the case by recalling D.W.1 for cross-examination.

2. In support of the applications, the advocate for plaintiff sworn to an affidavits that the present suit filed for the relief of declaration and for permanent injunction against appointment of trustees to the Anantheshwara and Chandramauleshwara temples. The case posted for further defendant evidence at that point of time impleading applications filed by the necessary parties and the case adjourned for their objections and after rejection of the said applications the case adjourned once again for further chief of D.W.1.

3. Prayer of the defendant for leading further evidence rejected and posted the case for cross-examination of D.W.1, but the advocate was under the impression that the suit was adjourned for further evidence of D.W.1 and could not appear and cross-examine the D.W.1 on the last date, but the prayer

of his colleague advocate was rejected and posted for arguments. As per the order sheet P.W.5 also not fully cross-examined. There is no need for cross-examination of the witnesses as the case has to be decided on the basis of evidence regarding Sampradaya, history of the temples, rituals to be performed, management and for the same there is a need for opportunity to the parties. Hence, prayed to allow the applications, otherwise the plaintiffs will be put to irreparable loss and injury.

4. The said applications have been resisted by the defendant No.1 and 2 by filing objections that the applications are false, frivolous, vexatious and not maintainable either in law or on merits. The applications are hit by inordinate delay, latches and culpable negligence. The applications filed are not maintainable. Hence, prayed for dismissal of the applications with exemplary cost.

5. Heard on both side.

6. The points that arise for my determination are :

1. Is there any sufficient grounds to allow the applications?

2. What order?

7. My answer to the above points are as follows:

Point No.1: In the affirmative,
Point No.2: As per final order;
For the following;

REASONS

8. Point No.1: The present suit filed by the plaintiffs against defendant Government for declaration that the Anantheshwar and Chandramouleshwar temples are attached to Sri. Krishna Mutt of Asta Mutts of Udupi. A consequential relief of permanent injunction against defendants restraining, them from appointing trustees to the said temples and for cost. Based on the pleadings, issues have been framed. To prove the said issues plaintiff side evidence concluded and the case posted for defendant evidence. The defendant Assistant Commissioner of Kundapura got examined as D.W.1 by filing affidavit in lieu of examination in chief on 15-04-2021 and posted to 20-04-2021 for further chief, on that day marked the documents and prays time for further chief of D.W.1 to 24-05-2021, 14-06-2021, 22-07-2021, 31-07-2021, 03-08-2021, 09-08-2021 and 10-08-2021. On 10-08-2021 I.A. filed for

appointment of Commissioner and posted for objections and after hearing arguments orders passed on 15-03-2022 and posted for further chief of D.W.1 to 01-04-2022 and on 01-04-2022 adjournment application filed, posted to 11-04-2022, on 11-04-2022 the applications to implead the proposed defendants filed for which orders passed on 26-07-2022 and posted for further chief of D.W.1 to 01-08-2022.

9. On 01-08-2022 prays time, posted to 19-08-2022 and on 19-08-2022 adjournment application filed and posted to 22-08-2022 and on 22-08-2022 posted the case for cross of D.W.1 to 25-08-2022 again application filed orders passed on 17-09-2022 and posted to 19-09-2022. On 19-09-2022 adjournment application filed to tender D.W.1 and posted to 22-09-2022, on 22-09-2022 again prays time for cross of D.W.1. Hence, closed and posted for arguments at that juncture the present applications filed for the reason as stated supra.

10. As per the order sheet though sufficient time granted moreover, the matter is of the year 2003 listed one and even though sufficient time granted and no doubt delay, but itself is not a ground to reject the applications as the burden is on the plaintiffs to prove their case then only it will shift on the defendants. Moreover, D.W.1 not yet cross-examined and if any inconvenience

caused to the D.W.1, who being an Assistant Commissioner who stated that Court proceedings have to be taken regular basis as per the guidelines, but it can be compensated in putting the plaintiffs on terms. Accordingly, as justice always demand opportunity, in view of the same I feel it is just and necessary to allow the applications. **Hence, I answer point No.1 in the affirmative.**

11. Point No.2: For the above reasons, I proceed to pass the following:

COMMON ORDERS

Applications filed by plaintiff i.e.,
I.A.No.XXXVII and XXXVIII Under Order XVII Rule
11 and Sections 151 of C.P.C., are hereby allowed
on cost of Rs.500/- each.

D.W.1 recalled by reopening the case and
permitted for cross-examination of D.W.1.

(Smt. Shakunthala S.)
Prl. Sr. Civil Judge and CJM.,
Udupi.

Call On : 12-10-2022