

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,**

**KARKALA**

Present: Smt.Sharmila C.S., B.A.L., LL.M.,  
Senior Civil Judge and ACJM, Karkala.

Dated: This the 10<sup>th</sup> day of March 2026.

**O.S. No.67/2017**

Smt. Rathnamma and others. ..Plaintiffs  
- Vs. -  
Sri. Namiraja Pandi and others ..Defendants

**PARTIES TO I.A.NO.37 to 39**

Smt. Rathnamma and others. .. Applicants/plaintiffs  
-Vs. -  
Sri. Namiraja Pandi and others .. Opponents/defendants

i.	Provision under which the application is filed	IA 37 : Order XVIII Rule 17 and Section 151 of CPC IA 38 : Section 151 of CPC IA 39 - Order VII Rule 14 r/w Section 151 of CPC
ii.	Relief sought for	IA 37 : To recall PW 2 IA 38 : To reopen the case IA 39: To receive documents
iii	The date on which the application is filed	IA 37: 03-03-2026 IA 38: 03-03-2026 IA 39: 03-03-2026
iv	Number of the application	I.A.No.37 I.A.No.38 I.A.No.39
v	The date on which the objections are filed by different opponents	IA 37 to 39: D1 & 7: 05-03-2026 IA 37 to 39 – D2 to 4: 06-03-2026
vi	The date on which the orders were passed on the said application.	10-03-2026

**COMMON ORDER ON I.A.NO. 37 UNDER ORDER XVIII**  
**RULE 17 AND SECTION 151 OF C.P.C., I.A.NO.38 UNDER**  
**SECTION 151 OF C.P.C. AND I.A.NO.39 UNDER ORDER**  
**VII RULE 14 R/W SECTION 151 OF C.P.C**

These three applications are taken up together for common discussion since they are inter-connected and attracts same reasoning.

2. These three applications are filed by plaintiffs seeking recall of P.W.2, reopening the case for further chief examination and condonation of delay in production of the documents.

3. The plaintiff No.4 deposes that the suit is seeking relief of partition and that the documents were obtained very recently. Accordingly for other reasons, prays to allow the applications.

4. Per contra counsel for the defendant No.1 denies that the documents were obtained recently and submits that they are only intended to get over the clear admissions made by P.W.2.

5. Defendant No.7 adopts the objections filed by defendant No.1.

6. Defendants No.2 to 4 submits that the documents are not at all relevant and the same cannot be received at this stage, where the trial has been concluded and prays to dismiss the applications.

7. Heard from counsel for defendants No. 1, 2 to 4 and 7. The counsel for plaintiffs filed notes of arguments.

8. The following point arise for determination.

1) Whether there are sufficient grounds made out to recall P.W.2 for further chief examination?

2) Whether there are sufficient grounds made out to reopen the case?

3) Whether there are sufficient grounds made out to receive the documents by condoning the delay?

9. My answers to the above points are

Point No.1 – In affirmative,

Point No.2 – In affirmative,

Point No.3 – In affirmative,

for the following

### **REASONS**

10. **Point No.1 to 3:-** These points are taken up together for common discussion, since they involve same set of facts and evidence and common reasonings.

11. These three applications were filed by the plaintiffs after conclusion of the evidence of the defendants. It would be pertinent to note that the counsel for the plaintiffs filed a memo seeking that they have the rebuttal evidence to lead, which the court has rejected. Now, have come up with these applications seeking recall of P.W.2, reopening case and receive documents by condoning delay.

12. Counsel for the plaintiffs in the notes of arguments submits that the plaintiffs have filed suit for partition. That the defendants No.1 to 4 have claimed that Sri. Jinnappa Hegde died in the year 1953, the daughters are not entitled for any share in the property. That the defendant No.1 has set up the purported Will of Jinnappa Hegde and Padmavathi Amma and are claiming absolute ownership over the property. It is further urged in para No.3 of the notes of arguments that "In so far as

issues framing casting burden upon the defendants are concerned, it is for the defendants lead the evidence first and the plaintiffs shall have the right of rebuttal. In case on hand after examination of P.W.1 and P.W.2, defendants have lead the evidence. The court vide order dated 27-02-2026 has rejected the said memo and posted the matter for arguments. Since several documents have surfaced after institution of the suit, clearly demolishes the claim of the defendants, the plaintiffs herein have filed I.A.No.39 seeking relief of receiving 12 documents and also have filed connected I.As.”

13. Ofcourse this court has rejected the memo filed by the plaintiffs vide order dated 27-02-206 , wherein this court has clearly observed that the plaintiffs had never sought for leading rebuttal evidence on the evidence lead by the 1<sup>st</sup> defendant. The plaintiffs ought to had been very clear as to why they have to lead the rebuttal evidence and ought to had sought for permission at the earlier stage. When the Will was set up by the defendant No.1 by filing written statement itself, there was burden upon the plaintiffs to have filed a memo or sought for permission to lead the rebuttal evidence. When such was not

the case, the plaintiffs have slept over the matter for all these days and it appears that the documents which are now sought to be produced have not been produced earlier deliberately. Even it would be pertinent to note that while filing the memo, the plaintiffs have never stated that what is the rebuttal evidence that have to be lead nor had produced any documents. The rebuttal evidence has to be lead only with respect to the Will or any specialized documents, which the defendants rely upon and not upon what is not claimed by the defendants. The rebuttal evidence can be lead only with respect to the mental status of the executor or his health condition etc and not with respect to the other matters , and any evidence which is to be lead with respect to the other matters, cannot be considered as the rebuttal evidence. Therefore, in the absence of such details, this court has proceeded to pass the order rejecting the memo filed by the plaintiffs.

14. It is further noted in the written arguments that “the defendants have repeated their parrot statements that the Hon’ble High Court of Karnataka has directed this court to

dispose of the suit in time bound manner as such the application is liable to be dismissed on the said ground alone. Without being prejudiced by such statements of the defendants is required to ascertain as to if the documents are relevant to decide the matter in issue or not.”

15. When there is order of the Hon'ble High Court of Karnataka, this court cannot go out of the principles of natural justice and always has to be adhered into. The relevancy of the documents cannot be considered at this stage. It is the plaintiffs who knows as they are burdened to prove the case. Must produce the said documents. The admissibility of the documents and the relevancy of the documents can be considered at the later stage. Mere marking of the documents does not itself prove the documents as genuine and true one, where there is heavy burden upon the plaintiffs. When the plaintiffs say that the documents are relevant, the court has to consider the same.

16. Counsel for the plaintiffs has given a detailed explanation of the documents which are being produced vide I.A. Nos.37 to 39 and necessity of those documents, which

cannot be considered at this stage. It is also submitted in the notes of arguments that “the documents which are now sought to be produced by the plaintiffs points out that the case put forwarded by the defendants No.1 to 4 is shame and false.” Further states that “the documents sought to be produced are procured very recently. However it was argued by the counsel for the defendants No.1 to 4 that the date of receipt of the documents itself proves that the documents were with the plaintiffs and not obtained recently as stated by them. However, this court , at this stage, cannot deny the right of the plaintiffs to produce the documents. Whether the said documents overcome the earlier evidence lead by the plaintiffs has to be seen and whether it proves the case of the plaintiffs also has to be seen by this court, which can only be through exhibiting the same before this court.

17. These three applications are filed after completion of evidence of the defendants. The documents, as seen, were issued in the year 2025 itself. However there are some documents which are obtained under R.T.I. But the court only has to consider that there is heavy delay in filing of these

documents, where the suit is of the year 2017. There is also order of the Hon'ble High Court of Karnataka that the parties and the counsels should co-operate for the disposal of the case. The plaintiffs could have produced the said documents even at the time of filing a memo, which they have not done so, deliberately causing the delay. Therefore, the plaintiffs should be saddled with some cost in order to compensate the delay and the loss and hardship caused to the defendants. Accordingly holding that there are sufficient grounds made out to condone the delay in producing the documents, above Point No.3 is answered in affirmative.

18. When the delay is condoned and documents are to be taken on record, the stage has to be reopened from arguments to plaintiffs evidence and the witness of the plaintiffs has to be recalled for marking of the same. Thus holding that the reopening of the stage and recall of P.W. 2 is very much necessary the above Points No.1 and 2 are also answered in affirmative.

19. In view of the above reasoning, I proceed to pass the following :

**ORDER**

I.A.No.37 filed under Order XVIII Rule 17 and Section 151 of CPC, I.A.No.38 filed under Section 151 of CPC and I.A.No.39 filed under Order VII Rule 14 r/w Section 151 of CPC by the plaintiffs are herewith allowed with total cost of Rs.6,000/- , to be divided among counsel for defendant No.1, counsel for defendant No.2 to 4 and counsel for defendant No.7.

Stage of the case is reopened from arguments to further chief of P.W.2.

P.W.2 is recalled.

The delay in filing documents is condoned and the documents are received.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 10<sup>th</sup> day of March , 2026.)

**(SHARMILA C.S.)**  
Senior Civil Judge & ACJM, Karkala