

### **ORDER ON I.A. NO. XIV**

The learned counsel for the applicant/defendant No.3 has filed IA No. XIV under Order VIII Rule 1(3) of C.P.C. along with affidavit of defendant No.3 praying to receive the documents mentioned in the application after condoning the delay in producing the same.

2. The counsel for the defendant No.3 has filed affidavit stated that he intend to produce the photographs showing the road existing suit schedule properties. He has pleaded in his written statement that the said public road was developed by the Government from out of the Area Development Fund of then Parliament Member Sri. Oskar Fernandes. The estimate prepared by the concerned officials for development of road is obtained by him today. Further by the side of Sri Bakre Mutt the Government

has constructed a Yathri Nivasa. The above said road leads to Sri Bakre Mutt and also to said Yathri Nivasa. The documents sought to be produced are very much relevant to establish his contentions in this suit. Therefore, it is just and necessary to permit him to produce the said documents in the interest of justice. Hence, prayed to allow the application.

3. Per contra, the counsel for the plaintiff has filed the objection to the IA No. XIV stating that there is no justification for non production of the alleged documents till filing of application. The documents are not at all relevant and not with respect to the plaint "A" schedule property. There is no justification in allowing the application and application is liable to be dismissed. The reason assigned in the affidavit filed along with application is neither correct nor sufficient to allow the application and application is liable to be dismissed in lumine. Hence prayed to dismiss the application.

4. Heard arguments. On perusal of the application and objections and materials placed on record following points arise for this court consideration:

1. Whether the defendant No.3 has made out grounds to allow the application?

2. What order?

5. This court answers the above points as under:

Point No.1: In the Affirmative.  
Point No.2: As per the final order  
for the following:

### **REASONS**

6. **Point No.1:** The suit is one for the permanent injunction against the defendants restraining them, their men, servants, and all other persons claiming under them from trespassing in to, or by forming any road or committing any illegal act by any mode in the part "A" schedule property.

7. When the matter was posted for further chief of DW.1, at this stage the counsel for defendants have filed present application to permit him to produce the documents as prayed in the application. It is settled law that substantial rights of the parties should not be deprived on technicalities and delay alone need not be the criteria for dismissing the application. The defendants' evidence is not yet closed. The plaintiff is at liberty to cross-examine the witness on the above said documents. The reasons assigned by the counsel for the defendants in the affidavit are justifiable. Therefore, for the aforesaid reason, this court answers Point No.1 in the '**Affirmative**'.

8. **Point No.2:** In view of the discussion and the findings arrived at in Point No.1, this court proceeds to pass the following:

**:: ORDER ::**

I.A. No. XIV filed by the applicants/defendant No.3 under order VIII Rule 1(3) of C.P.C. is hereby allowed.

For further chief of DW.1 by:  
17.11.2025.

I Addl. Civil Judge & J.M.F.C.,  
Karkala.