

ORDERS AN IA NO.VII

The present application is filed by plaintiff U/o 7 Rule 14(3) R/w 151 of CPC with prayer to permit plaintiff to file the documents as per list.

2. In the affidavit, it is stated that the suit is for relief of partition for allotting 1/4th share to plaintiff. However, in order to prove the said contention, plaintiff unable to produce documents earlier and said documents have been traced recently. The said documents are important to prove his case, hence, it is prayed to condone the delay by permitting to produce the documents.

3. The counsel for defendants filed objection by contending that the application is not maintainable under law or on facts.

4. It is further contended that, the suit is of

year 2012, but plaintiff has not disclosed existence of Will dated 20-03-2002 in his favour. The Bhadrappa S/o Gulappa has not at all executed the Will in favour of plaintiff at any point of time. The plaintiff intended to produce the documents after lapse of so many years, hence application is not maintainable.

5. It is further contended that, the 6th defendant has constructed the house by obtaining aid of the Government over 4th schedule property and she is in possession. The plaintiff is not in possession of the suit property. Hence, prayed to reject the application.

6. Heard the learned counsel for plaintiff and also learned counsel for defendants. Perused the materials available on record.

7. The following points that would arise for consideration by this court;

POINTS

- 1. Whether the plaintiff can be permitted to produce intended documents?*

2. What order?

8. The findings of this court to the above Points are as follows:

POINT NO.1 : In the Affirmative.

POINT NO.2 : As per order for the following: -

REASONS

9. **Point No.1:** The suit is filed for relief partition by claiming 1/4th share over suit schedule properties and also the Gift Deed dated 29-12-2011 executed by defendant No.1 in favour of defendant No.2 and 3 with respect of item No.1 is not binding on the right of plaintiff and also granting mesne profit with cost of the suit.

10. It is relevant to note that the earlier the suit has been decreed on 01-01-2019 by granting 6/20th share over the item No.1 and 3 of suit schedule properties. However, the said judgment has been set-aside by the Hon'ble Appellate Court in RA No.15/2021 and suit is restored on 02-12-2023. On going through judgment of Appellate Court, it is evidence that the Hon'ble Appellate Court has directed

to frame the issue No.1 to 8 which are referred in the judgment of Hon'ble Appellate Court. Hence, the suit is restored. Further Appellate Court has directed to dispose the matter expeditiously by giving fair opportunities to the parties. Thus, the plaintiff now intended to lead the evidence on his behalf by producing the intended Will dated 20-03-2002 and Demand register of item No.4 of the schedule property.

11. The counsel for defendants has objected for production of documents on the ground, that the plaintiff is not disclosed about existence of alleged Will and also contended that the said Will is not at all executed in favour of plaintiff. However, it is not stage decide/determine as to genuineness of the said Will and also other documents. Further more, if the intended documents are permitted to produce then the defendants are having opportunity to cross-examine the PW-1 on the said documents. Therefore, the defendants have not made out any ground to reject the present application and Hence, in order to give opportunity to the plaintiff, this court is of opinion that, the plaintiff is to be permitted to produce the documents. Thus, the **point No.1 is answered in the**

Affirmative.

12. **Point No.2:** For the foregoing reasons and discussions, this Court proceeds to pass following;

ORDER

I.A.No.7 filed by the plaintiff U/o VII Rule 14(3) R/w 151 of CPC is hereby allowed and plaintiff is permitted to produce the intended documents.

II Addl. CJ & JMFC., Shikaripura
C/c I Addl. CJ & JMFC., Shikaripura.