

COMMON ORDERS ON I.A No. 9 & 10

The applicant/ defendants has filed I.A. No.9 under Section 151 of CPC to reopen the case for the purpose of cross-examination of P.W. 1. Further the defendants has also filed I.A. No. 10 under Order XVIII Rule 17 r/w Section 151 of CPC seeking permission to recall P.W. 1 for the purpose of cross-examination of P.W. 1.

2. In support to the applications he sworn to the affidavits contending that after service of summons they have engaged an advocate and filed the written statement and thereafter the plaintiff has not led his evidence though sufficient time was given and further he has led his part evidence and then filed the application to produce the additional document and the same was allowed on 04/08/2022 and the plaintiff has marked said document at Ex.P.23 to P.26 and posted on 16/09/2022 for cross-examination. On 16/09/2022 the case was adjourned to 29/10/2022. On that day their counsel was not feeling well and hence he was unable to appear before the court and their counsel has instructed him to obtain all records pertaining to their property, but due to some unavoidable circumstances they were unable to provide the said document. For all these reasons they were unable to cross-examine P.W. 1, hence this court taken the cross-examination of P.W. 1 as nil and posted the case for defendant evidence. If the accompanying applications are not allowed they will be put to great injustice. On the other hand no hardship will be caused to the plaintiffs as they have got sufficient opportunity. On these grounds prayed for allowing the applications.

3. On the contrary, the plaintiffs tendered their objections wherein it contended that, the application dated 19/11/2022 filed by the defendants for permission to cross-examine P.W. 1 by reopening the case is highly illegal and and unsustainable both in law and on facts and liable to be dismissed. As could be seen from the order sheet the above suit was filed on 21/10/2013 for preventive relief of injunction against the defendants in respect of the suit schedule property. The defendants appeared with their advocate on 01/12/2013 and filed their written statement on

16/01/2014. The plaintiff had filed his chief evidence affidavit on 15/11/2017 and defendants did not chosen to cross-examine P.W. 1. Further order sheet shows on several occasion cross of P.W. 1 was taken as nil and again applications were made by defendants, P.W. 1 was recalled by defendants, but failed to cross-examine resulted in closing plaintiffs cross-examination as nil. The reason assigned at para 2 of the affidavit are all denied as false. The reasons urged in the applications for their absence are not justifiable and sustainable to grant the relief. On these grounds prayed for dismissal of the applications with exemplary costs.

4. Heard and perused material on record.

5. The point that arises for my consideration is:-

“Whether the applications filed by the applicant deserve to be allowed?”

6. My answer to the above point is in the affirmative for the following:-

REASONS

7. As per the averments of the affidavit annexed to I.A. No.9 and 10 it is particular case of the applicants/defendants that, after service of summons they have engaged an advocate and filed the written statement and thereafter the plaintiff has not led his evidence though sufficient time was given and further he has led his part evidence and then filed the application to produce the additional document and the same was allowed on 04/08/2022 and the plaintiff has marked said document at Ex.P.23 to P.26 and posted on 16/09/2022 for cross-examination. On 16/09/2022 the case was adjourned to 29/10/2022. On that day their counsel was not feeling well and hence he was unable to appear before the court and their counsel has instructed him to obtain all records pertaining to their property, but due to some unavoidable circumstances they were unable to provide the said document. For all these reasons they were unable

to cross-examine P.W. 1, hence this court taken the cross-examination of P.W. 1 as nil and posted the case for defendant evidence. On the contrary, it is particular objection of plaintiffs that I.A. No.9 and 10 are highly illegal and unsustainable as several opportunities were given to the defendants to cross-examine P.W.1, but they failed to do so and it is not comprehensible as there was any justifiable ground for non appearance of defendants before the court.

8. With this background that it necessary to record the events available on case record. The suit one for permanent injunction and for other reliefs. No doubt P.W. 1 fully examined in chief, but P.W.1 not yet to be cross-examined by the defendants. According to the plaintiff no justifiable ground that the defendants put forth on the record to allowed the application. On the other hand the defendants have specifically contended that, on that day their counsel was not feeling well and hence he was unable to appear before the court and their counsel has instructed him to obtain all records pertaining to their property. Further he also contended but due to some unavoidable circumstances they were unable to provide the said document. No doubt case on record, no supported evidence put forth by the defendants in support to their applications. On the ground alone it is not correct in the eye of law to deny the valuable rights of the defendants. If once opportunity granted to the defendants as he sought no legal impediment cause to the plaintiff. Further the law will also recognize if the court gave an equal opportunity and maintained an natural justice. No doubt the case on record though the defendants have an opportunity to cross-examined P.W.1 for the best reasons known to him he failed to make utilize such an opportunity. No doubt the case is one from the year of 2013 and also arrears to the court work. By considering the above all reason and to compensate the equal opportunity that I am of the view that there is an prima facie in the applications filed by the defendants. Hence, I answer the point raised for consideration in the affirmative and proceed to pass the following:-

ORDER

I.A. No.9 and 10 filed by the applicants/defendants are hereby allowed.

For cross-examination of P.W. 1 by 25/03/2023.

(Onkarappa.R)
V ACC &SJ, Bengaluru.