

**IN THE COURT OF XV ADDITIONAL CITY CIVIL &
SESSIONS: JUDGE AT BENGALURU (CCH.NO.3)**

Dated this 10th day of March 2023

O.S. No. 25874/2010

C/W

O.S.No. 6800/2011

C/W

O.S.No. 6468/2013

Present	:-	Sri. S.R.Dindalkoppa, B.Sc, LLB(Spl) XV Additional City Civil & Sessions Judge, Bengaluru.
Plaintiffs	:-	Mrs. Radhika Vasudevan and another
	V/s	
Defendants	:-	Late G. Parthasarathy Since deceased by his LR's and others

**ORDER ON I.A. No.1/23 FILED BY THE DEFENDANT No.5 U/O
U/O XVIII RULE 17 R/W SECTION 151 OF CPC, I.A No.2/23 FILED
BY THE DEFENDANT No.5 U/S 151 OF CPC, I.A. No.3/23 FILED BY
THE PLAINTIFF U/O XVIII RULE 17 R/W SECTION 151 OF CPC AND
I.A.No.4/23 FILED BY THE PLAINTIFF UNDER SECTION 151 OF CPC**

The defendant No.5 filed two I.A's I.A Nos.1/23 and 2/23 for re-call of P.W.1 and re-opening the case for cross examination of D.W.1.

2. In the affidavit the defendant No.5 contend that he had not appropriately instructed his Counsel to cross examine the D.W.1. As such, his Counsel sought for adjournment to cross examine D.W.1. But, the Hon'ble court by rejecting the prayer of his Counsel posted the matter for defendants evidence. The defendant No.3 submits they have no further defendant evidence. The defendant No.3 filed an application stating that there is no further evidence of defendant

Nos.4 and 5. As such, he could not file his application to re-call D.W.1 immediately. The Hon'ble Court by considering the application passed order on 02.02.2023 considering there is no evidence of defendant Nos.3, 4 and 5.

3. It is further contend that cross examination of D.W.1 is vital to the proceedings before this Hon'ble Court in order to elucidate the truth. He has got excellent case on merit. Hence, cross examination is very important. Hence, he filed these two applications for seeking permission to cross examine D.W.1 by re-opening and re-calling D.W.1.

4. On the contrary, defendant No.3 filed objections by denying the contention of defendant No.5. The cross examination of D.W.1 closed on 09.11.2022. On 09.11.2022, the defendant No.5 was did not seek opportunity to cross examine D.W.1 on various dates spanning one year. The defendant No.5 never sought to cross examine D.W.1 at any point of time.

5. It is further contend that on 17.11.2022, the plaintiffs filed application for re-call of D.W.1 for further cross examination. Accordingly, the plaintiff cross examined D.W.1 on 05.01.2023. Even though defendant No.5 never sought to cross examine D.W.1 nor made any representation before this Hon'ble Court on 05.01.2023. such conduct of the defendant no.5 could show that there is no bonafide intention to conduct the case on behalf of defendant No.5.

6. It is further contend that it is ridiculous to stated that defendant No.5 could not filed these applications in view of any

application filed by defendant No.3. Moreover, the filing of application by the defendant no.3 will not prevent the defendant No.5 from filing these applications. As such, the conduct of the defendant No.5 is negligent in prosecuting the matter. It is well established law that witness can be re-called only if the Court finds such ambiguity in evidence which requires clarification. It is not open for parties to the litigation to recall any witness to fill up lacunae in evidence or to overcome their negligence.

7. The defendant No.3 further contend that suit in O.S.No.6468/2013 is filed for partition of royalty alleged to have been received from certain patents. The defendant No.5 is the co-plaintiff in O.S.No.6468/2013. The Counsel representing the plaintiff extensively cross examined D.W.1. As such, it is not permissible for any co-plaintiff as engaged another Advocate and has failed to give instruction to her individual Advocate. Hence, prayed to dismiss the application with exemplary costs.

8. Similarly, the plaintiff also filed I.A Nos.3/23 and 4/23 under Order 18 Rule 17 of CPC and under Section 151 of CPC for re-call of P.W.1 for further examination in chief.

9. In the affidavit plaintiffs contend that they filed suit for partition of 1/6th share in the suit schedule 'A', 'B' and 'C' properties. They filed these applications to lead further chief examination on account of discovery of new documents which are vital for adjudication of the suit.

10. It is further contend that plaintiff examined and completed her evidence on 12.03.2021. In the year 2022 they discovered new documents, which has not been marked earlier and it is essential in the suit. The defendant witness No.1 was confronted with the document during his cross examination. But, the defendant witness denied the existence of the same. Hence, the plaintiff in order to produce the documents and marked in the evidence intends to recall P.W.1.

11. On the contrary, defendant No.3 filed objection by denying the contention of plaintiff. Apart from denial, defendant No.3 contend that issues were framed on 27.03.2013. The plaintiff commenced evidence in the year 2015, the plaintiff produced various documents pertaining to the three suits. But, not chosen to mark the same for the reasons best known to the plaintiff. During the cross examination of P.W.1 it is elicited that she is in possession of various documents and no difficulty in producing the same. During the cross examination P.W.1 re-opened her chief evidence several times and several opportunities to produce documents.

12. It is further contend that all the documents relevant to the three suits. The plaintiff deliberately not furnished any description or details of the document. The plaintiff not furnished copy of the document which she intend to marked in the evidence. The plaintiff without establishing the bonafide and genuineness of the averments in the application P.W.1 cannot be reopened. There is negligence on the part of plaintiff in leading evidence. Only after passing of the order on 02.02.2003 as evidence of defendant Nos.4 and 5 as nill. The plaintiff filed these applications by making false statements.

13. It is further contend that during the cross examination of P.W.1 plaintiff amended her plaint. On 11.02.2020 the plaintiff submit in view of the amendment plaintiff has right to lead further chief examination and accordingly P.W.1 re-opened. But, on 02.12.2020 plaintiff submits there is no further evidence. Again on 25.01.2021 and 11.02.2021 P.W.1 re-called and documents re-called and documents Exs.P.39 to P.65 are marked. Hence, as P.W.1 was re-called earlier and marked documents further re-call of P.W.1 does not maintainable. Hence, defendant No.3 prayed to dismiss the I.A.

14. On the basis of the above facts and circumstances the following points that arise for my consideration are as follows:-

1. Whether the applicant /defendant No.5 made out a ground for re-call of D.W.1 for cross examination by the defendant No.5 as per I.A Nos.1/23 and 2/23 ?
2. Whether the applicant / plaintiff made out a ground for re-opening and re-call of P.W.1 for further chief examination as per I.A Nos.3/23 and 4/23 ?
3. What order ?

15. Heard arguments of both sides and I answer the above points as here under :-

- Point No.1 :-** In the Affirmative
Point No.2 :- In the Affirmative
Point No.3 :- See for the following :

REASONS

16. Point Nos.1 and 2 :- On perusal of the contention of applicant defendant No.5 and opponent defendant No.3 it shows that earlier the defendant No.5 not intend to cross examine D.W.1. But, subsequently defendant no.5 intend to cross examine D.W.1 who is the defendant No.3 which is opposed by the defendant No.3.

17. Similarly, the plaintiff also filed application for re-call of P.W.1 for further chief examination. In order to marked the documents. Looking to the contention of both plaintiff and defendants there are three suits filed by both plaintiffs and defendants for seeking partition and injunction against each other. Though, as per the contention of one of the parties issue were framed in the year 2013 and evidence commenced in the year 2015. The parties are not able to complete their evidence inspite of more than 7 years. This clearly shows that the contention of the parties is not to dispose of the matter. They want to drag on the proceedings by filing one or the other applications. They conduct the Court can accommodate according to their convenience. However, looking to the merits on the case when it is a partition suit filed by them. Then they must produce all the documents and evidence at once. But, here they are produce documents according to their choice. Which clearly shows that there intention might be drag on the proceedings and to harass one another. But, any how when they have filed the suit for partition every body has got right to lead their evidence and cross examine the other. Merely there is a delay in proceeding the matter it is not a ground to reject their contention. Hence, I am of the opinion that even if D.W.1 is re-called for further cross examination of D.W.3. Then, I don't think it will not cause any of the parties. Similarly, if the plaintiff

is permitted to lead further examination, then the other side will not be put to much hardship. Because, as per the contention of plaintiff they got one more crucial document in the year 2022. But, what is the document they have not produced. Hence, under such circumstances I am of the opinion that even though all the applications are allowed and D.W.1 and P.W.1 re-called for cross examination and further chief examination respectively on payment of costs. Then nobody will be put to hardship. Hence, I answer point Nos.1 and 2 are in the Affirmative.

18. Point No.3 :- In view of the above discussion on point Nos.1 and, I proceed to pass following :-

ORDER

I.A No.1/23 filed by the defendant No.5 under Order 18 Rule 17 r/w Section 151 of CPC and I.A.No.2/23 filed by the defendant No.5 under Section 151 of CPC are hereby allowed on costs of Rs.1,000/-

D.W.1 re-called for cross examination by defendant No.5.

Accordingly, defendant No.3 is directed to keep D.W.1 present in the next date.

I.A.No.3/23 filed by the plaintiff under Order 18 rule 17 r/w Section 151 of CPC and I.A.No.4/23 filed by the plaintiff under Section 151 of CPC are hereby allowed on costs of Rs.1,000/-.

P.W.1 re-called for further chief examination.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this the 10th day of March 2023.)

(S.R. Dindalkoppa)
XV Addl.City Civil & Sessions
Judge, Bengaluru.