

ORDERS ON I.A No.15

The applicant/L.Rs of 1st defendant have filed I.A. No.15 under Order XVIII Rule 17 r/w Section 151 of CPC sought permission to recall the order closing the further cross-examination of P.W. 1 and permit the L.Rs of 1st defendant to further cross-examine the said witness.

2. In support the application defendant No.1(b) sworn the affidavit contending, the above matter was posted for cross-examination of D.W. 1. The plaintiff was fully cross-examined D.W. 1 and the matter is posted for further evidence of the defendants. But his advocate not fully cross-examined the P.W. 1 for reason that he had not given full information to his advocate on the Will, as substantial questions are involved in the suit. He has to prove the Will beyond reasonable doubts involved in the suit. Further cross-examination of P.W. 1 is not intentional and for bonafide reasons. Hence, the present application for recall the order and permit the L.Rs of 1st defendant to further cross-examination of P.W. 1. By allowing the present application no harm or loss will be caused to the plaintiff. On the contrary, if the application not allowed he will be put to untold hardship and justice will suffer. On these grounds prayed for allowing the application.

3. On the contrary, the plaintiff tendered their objections wherein it contended that, the above application is bereft of merit and same not maintainable either under law or on facts and the same is liable to be dismissed in limine. P.W. 1 has been extensively cross-examined by the defendants on 20/03/2019, 30/05/2019 and 04/07/2019. After cross-examination of P.W. 1 the defendants have examined D.W. 1 to D.W. 4 in support of their case and plaintiff has cross-examined them. At this stage the defendants have filed the above application to recall P.W. 1 for further cross-examination only with an intention to cover up the admissions given by D.W. 1 to D.W. 4. After conclusion of the cross-examination of defendants witnesses they have filed the above application only with an intention to improve their case and neutralize the admissions given by D.W. 1 to D.W. 4. The averments made in para 1 to 6 of the affidavit

are hereby denied as false and base less. On these grounds prayed for dismissal of the application with exemplary costs.

4. Heard the argument and perused material on record.

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

“Is L.Rs of 1st defendant entitled the order on I.A. No.15?”

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

REASONS

7. On summarizing the contents of affidavit and objection, it is not much disputed that P.W.1 and D.W.1 to D.W.4 have already fully cross-examined. Suit of the plaintiff for the relief of partition, declaration and such other reliefs. The present application that I taken under rule of natural justice. Wherein the natural justice, fair trial is one of its limb of natural justice. On virtue of fair trial rights of neither parties should not be denied. Case on record the defendants have contended his advocate not fully cross-examined the P.W. 1 for the reason that he had not given full information to his advocate on the Will, as substantial questions are involved in the suit. He has to prove the Will beyond reasonable doubts involved in the suit. But the plaintiff rigorously opposed the application. As per the plaintiff it is kind enough an attempt of the defendants, as to fill up the lacuna which elicited and admitted at through the mouth of D.W.1 to D.W.4. But, the plaintiff have not disclosed either in her objection or through her oral argument what are all the facts that the defendants make attempt to fill up the lacuna in the admission of D.W.1 to D.W.4. Thereby, the objection of the plaintiff herein just remain as an self surviving statement as to define her case. Whereas, other all surrounding circumstances of the case record that it warrant to this court to accord one more opportunity to the defendants and permit him to further cross-examine the P.W.1. On the contrary, nothing of material put

forth by the plaintiff, the application of the defendants deserves to be disallowed in virtue of any legal impediment. Even if permitted the defendants to further cross-examine by accord an one more last opportunity to him, there is no chance of causing any injustice to the plaintiff. True if once P.W.1 tendered for further cross-examination the same may cause loss of energy and expenses to the plaintiff. On the same ground alone the opportunity to other side should not to be declined. Further the same such cause of loss could be compensated by means of monetary award. With the background of above all observation, I answer the point raised for consideration in the affirmative and proceed to pass the following:-

ORDER

I.A. No.15 filed by the learned counsel for L.Rs of defendant No.1 hereby allowed on payment of cost of Rs.500/-.

Tendering of P.W. 1 for further cross-examination by 26/03/2024.

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