

IN THE COURT OF THE XXXIV ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU

Dated this the 24th day of April, 2019

Present :-

Sri.Shivanagouda, B.Com. LL.B., (Spl.)
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.

O.S. NO.10880/2006

Plaintiffs :- Sri.Guruswamy and others
V/s

Defendants :- Smt.Akkamma and others

PARTIES IN I.A. NO.4/19 & 5/19

Applicant :- Sri.Guruswamy and others
V/s

Respondents :- Smt.Akkamma and others

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ORDER ON I.A.4/19 & 5/19

1. Advocate for the plaintiffs has filed I.A.4/19 under Section 151 of C.P.C. praying to reopen the case from 16/03/2019 and permit the plaintiffs to cross-examine DW.1. Advocate for the

plaintiffs has filed I.A.No.2/19 under Order XVIII Rule 17 r.w.s. 151 of C.P.C. praying to recall the order dated 16/03/2019 and permit the plaintiffs to cross-examine D.W.1.

2. In support of the applications, plaintiff Sri.Krishnappa @ Abbappa has sworn to an affidavit and has taken similar contentions in both the affidavit and submitted that he has been examined as P.W.1 and was also cross-examined by defendants counsel and defendants also lead their evidence and case was posted for cross-examination of D.W.1. In the first round his counsel sought time for cross-examination and the court rejected his oral submission and passed over the matter for cross of D.W.1 at 3 O' clock and as there was some urgency plaintiff's counsel had to go out of station and though the junior counsel made submission and prayed for time, prayer was rejected and closed the cross-examination of D.W.1 and posted for argument on 18/3/2019. It is further submitted that plaintiff has good case on merits and if the application is not allowed he would be put to great hardship and inconvenience and it would lead to multiplicity of proceedings and thus prayed to allow the application.

3. Defendant No.16 and 17/respondents have filed objections to the applications and contended that the applications are not maintainable either in law or on facts and the plaintiff's counsel has taken sufficient opportunity for the same reason and has mislead this court and has denied the other contents of the affidavit as false and prayed to dismiss the applications.

4. Heard arguments.

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

Whether the applications filed by the applicants under Section 151 of C.P.C. and under Order XVIII Rule 17 r.w.s 151 of C.P.C. deserves to be allowed?

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

REASONS

7. This is a suit filed by the plaintiffs against the defendants for partition of the suit schedule property. Issues are framed, evidence of plaintiffs' side is lead and also evidence of defendants side is also lead. That on 5/10/2018 D.W.1 was present and was fully examined and got marked Ex.D.19 and

Ex.D.20 and was posted for cross of D.W.1 to 30/10/2018. That on 30/10/2018 plaintiffs' advocate prayed time to cross-examine D.W.1 and the same was allowed on cost of Rs.500/- and posted to 5/11/2018. That on 5/11/2018 again plaintiff has prayed time to cross-examine D.W.1 and the same was allowed on cost of Rs.500/- and was posted to 24/11/2018. That on 24/11/2018 plaintiffs' advocate was absent and plaintiff was present and he prayed time for cross of D.W.1. On that day the court has taken cross of D.W.1 as nil and posted for arguments. On the next date of hearing i.e., on 1/12/2018 I.A.No.3/18 and I.A.4/18 under the same provisions as sought for in the present applications were sought and the same were allowed on 5/12/2018. Again on 17/12/2018 the plaintiff advocate prayed time for cross-examination of D.W.1, it was taken as closed and posted for arguments. Again on 2/1/2019 I.A.No.1/19 and 2/19 under the provisions of Section 151 of C.P.C. and under Order XVIII Rule 17 r.w.s. 151 of C.P.C. were filed and the same were allowed on 12/2/2019 by imposing cost of each Rs.750/- and was posted to 16/2/2019 by permitting plaintiffs to cross-examine D.W.1 as a last chance. That on 16/2/2019 and also on 22/2/2019 both D.W.1 and plaintiff were absent and cross-examination of D.W.1

and defendant evidence were taken as closed and posted for arguments on 27/2/2019.

8. Again, that on 27/2/2019 plaintiff filed similar applications and were allowed on cost of Rs.500/- each and posted for cross of D.W.1. That on 2/3/2019 plaintiff advocate was present and sought time for cross of D.W.1 and posted to 16/3/2019. That on 16/3/2019 plaintiff advocate sought time to cross-examine D.W.1 and as sufficient chances were provided, prayer was rejected and cross-examination was taken as nil and both side evidence was recorded as closed and posted for arguments. That on 18/3/2019, applicant/ plaintiff has come up with these applications.

9. On perusal of the proceedings of the case it is crystal clear that the applicant is filing the application one after the other and seeking adjournment for cross-examining D.W.1. The applicant is not much diligent in conducting the case. Already sufficient opportunities are provided to the applicant to cross-examine D.W.1. There are no grounds to allow the applications. Accordingly the point is answered in the negative and proceed to pass the following :-

O R D E R

I.A.4/19 and I.A.5/19 filed by the plaintiffs/ applicants under Section 151 of C.P.C. and under Order XVIII Rule 17 r.w.s. 151 of C.P.C. respectively are rejected on payment of cost of each Rs.500/- payable by the applicants to the respondents.

(Dictated to the Judgment Writer directly on computer, typed by him, revised by me and after corrections pronounced in the open court on this the 24th day of April, 2019.)

(SHIVANAGOUDA)
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.