

ORDER ON I.A.XI

The defendants No.1 and 2 filed I.A.XI under Order 18 Rule 17 R/w section 151 of CPC to recall PW1 for cross examination.

2. In the affidavit annexed to the application, it is averred that defendants No.1, 2, 8 and 9 have recently changed their advocate. On the last date of hearing, defendant No.1 was out of station. His counsel was attending some other court. At that point in time, the court was pleased to take cross examination of PW1 as nil and posted the case for further evidence of plaintiff.

3. It is averred that the suit involves serious question of laws and facts. They have to be elicited during the cross examination of PW1. If the application is not allowed, defendant No.1, 2, 8 and 9 will be put to great hardship. Accordingly, they prayed to allow the application.

4. The plaintiff has filed objections contending that the grounds urged in the affidavit are false. The court has given ample opportunities for defendants to cross examine PW1, but they have not utilised the same. Therefore, cross examination was taken as nil.

Defendants have not made out grounds to allow the application. Accordingly, the plaintiff prayed to dismiss the application.

5. Heard. Perused all materials available on record.

6. Now the points that arise for consideration are as follows;

1. Whether the application deserves to be allowed?
2. What order?

7. My answer to the above points are as hereunder:

Point No.1: In the affirmative

Point No.2: As per the final order for the following:

REASONS

8. **Point No.1:-** The plaintiff has a suit for partition and separate possession. Defendants have filed written statement and taken several contentions. In order to put-forth their contentions, cross examination of PW1 appears to be necessary. If the defendants No.1 and

2 are not given an opportunity to cross examine PW1, they will be put to great hardship.

9. The order sheet discloses that defendants No.1 and 2 have taken several adjournments for cross examination of PW1. Even cost was also imposed on defendants No.1 and 2. However, as there is serious matter in dispute, delay caused by the defendants No.1 and 2 shall not curtail them from cross examining PW1. Delay can be compensated by imposing heavy cost. Therefore, I am of the opinion that defendants No.1 and 2 have made out grounds to allow the application. Accordingly, point No.1 is answered in the affirmative.

10. **Point No.2:-** In view of the above discussion, I proceed to pass the following:

ORDER

I.A.XI filed by the defendant No.1 and 2 under Order 18 Rule 17 R/w section 151 of CPC is hereby allowed on cost of Rs.2,000/-.

PW1 is recalled.

Defendants No.1, 2, 8 and 9 are hereby directed to cross examine PW1 on the next date of hearing without fail.

For cross examination of PW1.

Call on 08.07.2024.

Sd/-

**I Addl. C. J. & JMFC,
Belagavi.**