

KABG040004092019



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 19TH DAY OF SEPTEMBER-2025

ORIGINAL SUIT NO.187/2019

PLAINTIFF :

1)	Smt. Kavita D/o. Shankar Nagannavar.
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Vs.

DEFENDANTS :

1)	Smt. Shantabai W/o. Parashuram Mahar @ Kamble and others.
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PARTIES TO I.A.NO.XI

Applicants/Defendants :

1)	Smt. Shantabai W/o. Parashuram Mahar @ Kamble and others.
	(By Shri. S. H. Yadawad, Adv.)

Vs.

Opponent/Plaintiff :

Kav	Smt. Kavita D/o. Shankar Nagannavar.
	(By Shri. M. N. Kulkarni, Adv.)

ORDER ON I.A.NO.XI

The counsel for defendants has filed application U/O.XVIII Rule 17 R/w. Sec.151 of C.P.C. seeking to recall PW-1 and PW-2 for their cross-examination by defendants.

2. In the affidavit annexed to the application, the defendant No.3 has stated that the present suit is instituted by plaintiffs for the relief of partition in respect of suit properties and after receipt of summons, the defendant No.3 made all efforts to trace out the documents for preparing written statement and meanwhile he was not keeping good health, he could not make effective communication with his counsel. That thereafter his mother i.e., defendant No.1 expired and it affected him and other defendants emotionally and they could not meet their counsel to provide instructions for cross-examination of PW-1 and PW-2 who have led their evidence. It is further stated that this Court has taken cross-examination of PW-1 and PW-2 as nil and now the matter is posted for defendant evidence. That the cross-examination of

said witnesses is very much necessary as there are every chances of defendants succeeding in the matter if the present application is allowed. It is further stated that no loss or prejudice would be caused to other side if the present application is allowed and on the contrary the defendants will be put to untold hardship if the application is rejected. On these grounds, the defendants have prayed to allow the said application.

3. Per contra, the plaintiff has filed detailed objections to the said application on the ground that the contents of affidavit annexed to the application are all false and that the defendant No.1 expired long back i.e., in the year 2021 and hence defendant No.3 cannot take the said contention that the said loss of his mother has affected him and other defendants and that due to the said reason, they could not provide instructions to the counsel to cross-examine PW-1 and PW-2. It is further stated that when the matter stood posted for cross-examination of PW-1 and PW-2, the said witnesses were continuously present before the Court, but the defendants have intentionally not come forward to cross-examine them. That even the perusal of order-sheet would reveal that the matter was posted for cross-examination of PW-1 and PW-2 on 28.02.2024 and on the said date the cross-examination of PW-1 was taken as nil and on 22.11.2024 the cross-examination of PW-2 was taken as nil. As such, it is clear

that the intention of defendants is to harass the plaintiff by dragging the matter, because the defendants had sufficient opportunity to cross-examine PW-1 and PW-2, but they have not done so. On these grounds, the plaintiff has prayed to reject the present application with costs.

4. Perused the application and objections.
5. Heard arguments of both counsel.
6. The following points arise for consideration :

POINTS

- i) Whether the applicants/defendants have made out sufficient grounds to allow the I.A.No.XI ?*
 - ii) What order ?*
7. My findings to the above points are as follows :

Point No.1 : In the Affirmative,

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

REASONS

8. **Point No.1** : This is suit filed by the plaintiff seeking the relief of partition and separate possession. The defendants have filed present application seeking to recall PW-1 and PW-2 for cross-examination on the ground that the non cross-examination

of PW-1 and PW-2 in the past is not deliberate and it was due to unavoidable circumstances. The defendants have further urged that the mother of the defendant No.3 i.e., defendant No.1 in the present case expired and it affected the defendants emotionally and thereafter they could not meet their counsel to provide him instructions to cross-examine PW-1 and PW-2. Per contra, the plaintiff has filed her objections stating that defendant No.1 expired long back and the cross-examination of PW-1 and PW-2 was taken as nil on 28.02.2024 and 22.11.2024 respectively and hence it cannot be made ground to allow the present application.

9. No doubt, the order-sheet reveals that the cross-examination of PW-1 was taken as nil on 28.02.2024. But, it is pertinent to note that PW-2 was examined-in-chief on 07.11.2024 and on the immediate next date of hearing i.e., on 22.11.2024, the cross-examination of PW-2 was taken as nil in view of absence of counsel for defendants. Thereafter the case has been transferred to this Court and the defendants have filed the present application. Hence, this Court deems it fit to provide a fair opportunity to defendants to cross-examine PW-1 and PW-2 and to put forth their case during the said cross-examination. The objection of plaintiff that the defendants are intending to drag on the matter and cause delay in the matter can be met by imposing

condition and cost on the defendants. Hence, I answer **Point No.1 in the Affirmative.**

10. Point No.2 : For the aforesaid reasons, I proceed to pass the following :

ORDER

The application i.e., I.A.No.XI filed by defendants U/O.XVIII Rule 17 R/w. Sec.151 of C.P.C. is hereby allowed on cost of Rs.500/- and subject to condition that the defendants shall cross-examine PW-1 and PW-2 within next two dates of hearing without fail, failing which the case shall stand posted for defendant evidence automatically.

PW-1 and PW-2 are recalled for cross-examination.

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the **19th day of September-2025.**)

(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.