

KABG040006482011



**THE COURT OF THE III ADDL. CIVIL JUDGE & JMFC,
AT: BELAGAVI**

**Present: Sri. Nagaraj Barki. B.A., LL.B.,
III Addl. Civil Judge & JMFC
Belagavi.**

Dated: This, the 30th day of May 2023

ORIGINAL SUIT NO.1662/2011

Shri. Rajesh B Jadhav

.... Plaintiff

Vs.

Shri. Gopal J. Mudakappagol & another

Defendans

....

Parties to I.A.No.XVIII and XIX

Applicant/ Def No.2

Shri. Anil Yallappa Joshilkar by his LRs
--

Vs.

Opponent/ plaintiff

Shri. Rajesh B Jadhav

COMMON ORDERS ON I.A.No.XVIII and XIX
FILED BY THE THE DEFENDANT NO.2 U/O 18 RULE 17
R/W. SECTION 151 OF CPC

An instant applications filed by the defendant No.2 U/O.18 Rule 17 R/w. Section 151 of CPC for permit to conduct cross-examination of PW.2 and permitted to reopen the case for further cross-examination of PW.1.

2. In supporting affidavit filed to IA No.XVIII and XIX, the defendant has stated that, during the pendency of this suit, her husband has expired and they are LRs of defendant No.2 have been brought on record. Due to lockdown and due to death of her husband i.e., defendant No.2. During the life time of her husband, cross-examination of PW.1 was conducted. She has gone through the evidence and he has instructed some important materials to be illustrated from the mouth of the PW.1. The said material fact is touching the very route of the case. After death of her husband, she has in possession of the suit property and there are some

material documents, hence the PW.1 is required to be cross-examine. Hence this applications.

3. On the other hand, the plaintiff has filed objections to the above applications and he is contending that the Defendant No.2 had earlier filed application I.A. No. V on 04/03/2016 invoking the said provisions of XVIII Rule 17 of C.P.C Code for recalling the PW1 by advancing the top noted suit on today's board and in view of the no objection submitted by the Plaintiff to the said Application the same was allowed on cost of Rs.300/- by this Hon'ble Court. The PW1 was cross examined in full. The Plaintiff closed his evidence on 14/02/2020 and thereafter the suit came to be posted for evidence of the Defendant. In view of the Application filed by the legal heirs of deceased Defendant No.1, the PW.1 was recalled and was cross examined in full on Defendant No.1. On 24/01/2023 the suit came to be posted for evidence of the Defendant. Now again the legal heirs of deceased Defendant No.2 have come up with the said I.A. invoking the provision of Order XVIII Rule 17 of C.P.Code only to fill up the lacunas and cover up the

omission. The filing of the said application by the legal heirs of deceased Defendant No.2 at such highly belated. The conduct of the legal heirs of deceased Defendant No.2 is highly objectionable and condemnable. The Hon'ble Court has given sufficient opportunity to the legal heirs of Defendant No.2 to proceed with the case by cross examining the PW.1. The suit is posted for the evidence of the defendant. The Hon'ble Court cannot go back and reopen the suit for the purposed mentioned by the legal heirs of deceased defendant No.2 in the application to causing immense hardship and injustice to the plaintiff. The legal heirs of deceased defendant No.2 have not made any valid and cogent grounds for entertaining the said IA.

4. Further, the plaintiff has filed objection to the IA No.XIX, it is contended that the Hon'ble Court has given sufficient opportunity to the Defendant No.2 to proceed with the case by cross examining the PW1. The grounds now urged by the legal heirs of Defendant No.2 are totally unacceptable and do not merit any consideration. Hence, the said application filed the legal heirs of deceased

Defendant No.2 deserves to be rejected in limine at the threshold itself without even considering the merits of the same. Hence prays to reject the applications.

5. Heard the arguments on both sides on IA No.XVIII and XIX.

6. The important points that arise for my consideration are as under:

POINTS

1. Whether the defendant No.2 made out just and reasonable grounds to allow IA No.XVIII and XIX to recall the PW.1 for further cross-examination of PW.1?

2. What order?

7. My findings to the above Point No.1 is in the Affirmative and Point No.2 is as per final order, for the following:

REASONS

8. POINT NO.1:- This is the suit filed by the plaintiff against the defendants for the relief of permanent injunction over the suit property. The defendant has

sought for further cross examination of PW.1 at the stage of defendant evidence on the grounds that, after brought the legal heirs of defendant No.2 in the suit and there some material documents, therefore the further cross examination is required on those documents. Per contra, the plaintiff has strongly opposed the present applications on the reasons that, the defendant has filed many application for recall the PW.1 and the defendant has filed the 4th application at the stage of argument, the conduct of the defendant is not bonafide one and defendant has not satisfactory ground to allow the applications, instead the defendant has filed present applications for to fill up lacuna and intended to drag the matter.

9. In view reasons assigned by the defendant that, the legal heirs of defendant No.2 have brought on record recently, they have some documents to disprove the case of plaintiff. No doubt, this Court has given sufficient opportunity to the defendants. But, case of the defendants is concerned, the defendant No.2 has specifically disputed that the defendant No.2 was in possession of the property

and now Lrs of defendant No.2 are in possession. The learned counsel for the plaintiff has relied upon the decision of the Hon'ble High Court of Karnataka, 1) 2020(1) KCCR 2019, Vinayaka CNC Center private limited V/s Rudresh DP. 2) WP No.5449/2020(GM-CPC) dated 3/07/2020, 3) 2019 KCCR(3) 2011.

10. However, on careful perusal of the records, it appears that the defendant has sought only further cross-examination of PW.1. The intention of drag the matter is concerned, may be considered imposing cost and stringent conditions of without seeking further adjournment for further cross-examination of PW.1. It is a settled principle of law that the fullest opportunity should be given to the parties for depend their case. Accordingly, I answer point No.1 in the **Affirmative.**

11. POINT NO.2: - In the result and discussed above, I proceed to pass the following:

ORDER

**I.A.No.XVIII and XIX filed by the
defendant No.2 are hereby allowed on**

cost of Rs.2000/- as prayed for further cross examination of PW.1.

In the result, the defendant has to pay cost of Rs.2000/- to the plaintiff and permitted for further cross-examination of PW.1 without seeking any further adjournment on next hearing date. If, the defendant fails to do, the Court will pass necessary order on next hearing date.

(Dictated to the Stenographer on the computer and typed by her and corrected by me and then pronounced in the open Court on this 30th May 2023).*

**(Nagaraj Barki)
III Addl. Civil Judge & JMFC.,
Belagavi.**