

KABG040011052019



**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 14TH DAY OF NOVEMBER-2025

ORIGINAL SUIT NO.502/2019

PLAINTIFF :

1)	Smt. Norunnisa Wd/o. Abdul Munaf Angolkar and others.
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Vs.

DEFENDANT :

1)	Shri. Fajhal Ahamed S/o. Mohammadrasool Angolkar and others.
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PARTIES TO I.A.NO.VIII & IX

Applicants/Defendants :

1)	F. A. Angolkar and others of Belagavi.
	(By Shri. R. D. Jadhav, Adv.)

Vs.

Opponents/Plaintiffs :

1)	N. A. Angolkar of Belagavi.
	(By Shri. A. J. Kulkarni, Adv.)

COMMON ORDERS ON I.A.NO.VIII & IX

The counsel for defendants has filed applications U/O.XVIII Rule 17 R/w. Sec.151 of C.P.C. and U/Sec.151 of C.P.C. seeking to reopen the case and to recall stage of cross-examination of PW-1 and defendant evidence.

2. In the affidavit annexed to the applications, the defendant No.1 has stated that on 29.06.2024 the case stood posted for further evidence of PW-1 and on the submission made by counsel for plaintiffs that there is no further evidence by plaintiffs, the case was posted for defendant evidence and no opportunity was given to cross-examine PW-1. It is further stated that on 16.07.2024 the defendant evidence was closed and case was posted for arguments. That as such, the defendants have not led oral evidence and it is also not recorded that cross-examination of PW-1 is closed. Further, on 07.08.2024, the defendants filed I.A. No.VII to recall PW-1 for cross-examination, but the said application came to be rejected on 24.03.2025. It is further stated

that the defendant No.1 was suffering from typhoid fever and therefore he was bedridden and could not appear before the Court. That the defendants are willing to lead oral evidence and there is no negligence on their part. That if they are not permitted to cross-examine PW-1 and to lead their evidence, they will be put to loss and hardship. On these grounds, the defendants have prayed to allow the said applications.

3. Per contra, the plaintiffs have filed detailed objections to the said applications on the ground that the defendants have intentionally and willfully not cross-examined PW-1 when case stood posted for cross-examination of PW-1 despite sufficient opportunity being given only with an intention to cause delay in disposal of the suit. Now at a belated stage, the defendants have filed these applications and the plaintiffs strongly object and oppose the conduct and behaviour of the defendants. It is further stated that the reasons assigned by defendants in the affidavits annexed to the applications are not sufficient and there is no sufficient cause to allow the applications. On these grounds, the plaintiffs have prayed to dismiss the present applications with costs.

4. Perused the applications 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.VIII and IX ?*
- 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 plaintiffs seeking the relief of mandatory injunction directing the defendants to remove their belongings from the suit property and to stop usage of the suit property. The defendants have filed present applications seeking to recall PW-1 for cross-examination and also seeking permission to lead defendant evidence on the ground that the defendants intend to cross-examine PW-1 and lead their oral evidence. The present applications are filed when the case stood posted for arguments. However, the defendant No.1 has stated in the affidavits annexed to the applications that no opportunity at all was given to defendants to cross-examine PW-1 when the plaintiffs submitted that they have no further evidence to lead on

29.06.2024. This Court feels that the defendants have lost sight of the fact that further evidence of plaintiff is the stage when the plaintiffs would be given an opportunity to lead evidence of any other witnesses after completion of evidence of PW-1 and it is not the stage when the defendants would be asked to cross-examine PW-1. Perusal of order-sheet clearly reveals that the case stood posted for cross-examination of PW-1 on 19.01.2024 and thereafter about six adjournments have been granted to defendants to cross-examine PW-1, but the defendants have not availed the said opportunity. Even when the case stood posted for defendant evidence twice, neither the defendants nor their counsel appeared before the Court to lead evidence. This conduct of defendants clearly reveals negligence on their part in prosecuting the case. However, it is trite law that in a suit both parties have to be given equal and fair opportunity to put forth their case and defence. Keeping in view the said fact, this Court deems it fit to grant a final opportunity to defendants to cross-examine PW-1 and to lead their evidence subject to conditions that may be imposed in the course of this order. The objections taken by plaintiffs can be met by imposing suitable conditions while allowing the applications. Hence, I answer **Point No.1 in the Affirmative.**

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

ORDER

The applications i.e., I.A.No.VIII and I.A.No.IX filed by defendants U/O. XVIII Rule 17 R/w. Sec.151 of C.P.C. and U/Sec.151 of C.P.C. are hereby allowed on cost of Rs.1,000/- and subject to condition that the defendants shall cross-examine PW-1 within next two dates of hearing without fail and thereafter the defendants shall lead their evidence without further delay, failing which the case shall stand posted for arguments automatically.

Matter is reopened and PW-1 is recalled for cross-examination. After completion of cross-examination of PW-1, an opportunity would be given to defendants to lead their evidence.

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the 14th day of November-2025.)

**Prl. Civil Judge & J.M.F.C,
Belagavi.**