

OS.No.193/16

COMMON ORDERS ON I.A. NO.3 & 4

The learned counsel for the defendants has filed these applications seeking permission to recall the PW.1 for cross-examination.

2. The applications are supported by affidavits sworn by the defendant no.2 and it is contended that, the plaintiff has filed the present suit for declaration and permanent injunction. It is stated that, on last date of hearing i.e., on 16.02.2018, the case was posted for cross-examination of the PW.1, he contended that since one of his relative was expired as a result he was unable to contact his counsel to give information to cross examine the PW.1 and at the same time, this court has taken the cross-examination of the PW.1 as nil. It is stated that there is no negligence on the part of the defendants and they are interested to prosecute the case. Hence, prayed to allow the applications.

3. The plaintiff has opposed the said applications by way of filing objections. By contenting that, the applications filed by the defendants are not tenable and he denied the allegations of the defendants. It is stated that plaintiff has examined on 03.01.2017 and in the month of March 2017 the defendants have filed the written statement and the said application was allowed and again the PW.1 is examined on 06.09.2017 and since then, till 16.02.2018, the defendants have prolonged the matter. It is stated that the defendants have not made out grounds to reopen the case. Hence, prayed to reject the same.

4. Heard both side.

5. It is admitted fact that the plaintiff has filed the present suit for the relief of declaration and Permanent Injunction. It is submitted by the defendants that as his relative had expired and he could not give information to his counsel to cross examine the PW.1 and as such, this court has taken the cross-examination of the PW.1 as nil. On perusal of the materials available on record, it appears that after adducing the additional evidence by the plaintiff, the case was posted for cross-examination of PW.1. The defendants after taking 04 hearing dates for cross-examination, but they have failed to do so. Though, the ample opportunity has been granted to the defendants, but they have not utilized the same. Though, the defendant filed these applications at belated stage and after availing sufficient opportunities, in the best interest of justice to

resolve the dispute between the parties, one more opportunity needs to be given to the defendant to cross examine the PW.1. Mere filing the applications at belated stage, it is not a ground to reject the same. In the best interest of justice to avoid multiplicity of proceedings, it is necessary to allow the above applications with costs. On the other hand, no hardship will be caused to the plaintiff, if the applications are allowed. **Hence I proceed to pass the following,**

ORDER

I.A.No.3 and 4 filed by the defendant Under section 151 of CPC are hereby allowed on costs of in total Rs.500/-.

Sd/-

III Addl. C.J. and J.M.F.C., Belagavi.