

KABG300006092012



**IN THE COURT OF THE SENIOR CIVIL JUDGE
BAILHONGAL, AT: BAILHONGAL**

Dated this the 1st Day of July 2026

PRESENT:

Shri. Ravi Babu Chawan,
B.A. LLB.,
Senior Civil Judge, Bailhongal.

Original Suit No.83/2012

1) Shri. Vijayakumar Annappa @ Annarao Inchal
and others

..... Plaintiffs

(By Shri. M.C.P., Advocate)

- V/s -

1) Shri. Anilkumar Annappa @ Annarao Inchal
and others

.....Defendants

(By Shri. S.P.K./Shri.A.A.K., Advocates for D1 and D2)
(By Shri. S.B.L./Shri.B.B.D., Advocate for D3 and D4)
(By Shri. S.C.L., Advocate for D5)

PARTIES TO IA No.XX

Shri. Harshavardan Anilkumar Inchal,
Age: 34 years, Occ: Agriculture and Business,
R/o: Arihant, 4th cross, Basava Nagar,
Bailhongal.

..... Applicant/Deft.No.5

(By Shri. S.C.L., Advocate)

-V/s-

1) Shri. Vijayakumar Annappa @ Annarao Inchal
and others

.....Opponents/Plaintiffs

(By Shri. M.C.P., Advocate)

ORDER ON IA No.XX

The present I.A. No.XX is filed by the learned counsel appearing for defendant No.5 under Section 151 of C.P.C., praying to direct the plaintiff to first cross-examine defendant No.2 and thereafter permit the defendant No.5 to cross-examine the defendant No.1, contending that the defendant No.5 is not colluding with defendant No.1.

2. In the memorandum of facts accompanying the application, it is contended that defendant No.5 is independently contesting the suit and is not colluding with

the defendant Nos.1 and 2. It is further stated that though defendant No.5 has adopted the written statement filed by the defendant Nos.1 and 2, such adoption is not in its entirety. According to the applicant, only the pleadings relating to the agricultural land situated at Devalapur village have been admitted and the remaining averments made in the plaint have been specifically denied. It is further contended that the plaintiffs have wrongly included self acquired properties of defendant No.5 as joint family properties and therefore defendant No.5 has an independent defence. It is further stated that there is no justification to compel the defendant No.5 to cross-examine defendant No.1 before the plaintiffs. According to the defendant No.5, the plaintiffs, being the opposite party to defendant No.1 should first cross-examine the defendant No.1 and only thereafter defendant No.5 should be called upon to conduct cross-examination. On these grounds, defendant No.5 has sought relief as prayed.

3. Per contra, the plaintiffs have filed detailed objections contending that the application is wholly with misconceived, not maintainable either in law or on facts and is liable to be dismissed. It is specifically contended that defendant No.5 is none other than the son of defendant No.1 and both are contesting the suit together.

It is further contended that defendant No.5 has substantially adopted the written statement filed by the defendant Nos.1 and 2 and that there is absolutely no conflict of interest between them. According to the plaintiffs, defendant Nos.1 and 2 have specifically pleaded that the properties standing in the name of defendant No.5 are his self acquired properties and defendant No.5 has also taken the identical plea. Thus, both defendant Nos.1, 2 and 5 are supporting each other's case. The plaintiffs have further contended that the intention behind filing the present application is only to enable defendant No.5 to watch the cross-examination conducted by the plaintiffs and thereafter fill up any omissions or lacuna that may arise in the evidence of DW.2. Such a course, according to the plaintiffs, would seriously prejudice their case and result in miscarriage of justice. Hence, they have prayed for dismissal of the application.

4. Heard the learned counsel appearing for defendant No.5 and learned counsel appearing for the plaintiffs.

5. Perused the pleadings, memorandum of facts, objections and the material available on record.

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

1) Whether the defendant No.5 has made out sufficient grounds for invoking inherent powers of this court under Section 151 of C.P.C, to direct the plaintiffs to first cross-examine the DW.2 before defendant No.5 is permitted to cross-examine him?

2) What order?

7. My findings on the above points are as under:

Point No.1 : In the Negative

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

REASONS

8. **Point No.1**:- The relief sought by the defendant No.5 is purely procedural in nature. By invoking inherent powers of the court under Section 151 of C.P.C., defendant No.5 seeks direction altering the ordinary sequence of cross-examination. It is a settled proposition of law that the inherent powers preserved under Section 151 of CPC are intended to meet the ends of justice or to prevent abuse of the process of the court. Therefore, such powers cannot be exercised in a routine manner or merely for the

convenience of a party. Before exercising such jurisdiction, court must be satisfied that exceptional circumstances exist warranting departure from the ordinary procedure.

9. The principal ground urged by the defendant No.5 is that he is not colluding with defendant Nos.1 and 2. However, a careful reading of the written statement filed by the defendant No.5 discloses that he has admittedly adopted the written statement of defendant Nos.1 and 2 except to a limited extent. Even according to the defendant No.5, only certain pleadings have been independently asserted while the principal defence taken by the defendant Nos.1 and 2 has been adopted. Therefore, the very pleadings of defendant No.5 disclose that there exists substantial similarity in the defence projected by defendant Nos.1 and 5. The pleadings further reveal that the defendant Nos.1 and 2 have consistently asserted that the properties standing in their name as well as in the name of defendant No.5 are their respective self acquired properties and not the ancestral joint family properties as alleged by the plaintiffs. The defendant No.5 has also taken the very same stand in respect of the properties standing in his name. Thus, on the principal issue involved in the suit, namely the nature

of the suit properties, there is no conflict whatsoever between the defence of defendant Nos.1, 2 and 5. Merely because, defendant No.5 has stated that he has not adopted the written statement of defendant Nos.1 and 2 in its entirety cannot automatically lead to the conclusion that the interest of defendant No.1, 2 and 5 are adverse to each other. Significantly, defendant No.5 has not pointed out a specific pleading wherein defendant Nos.1 and 2 have made any statement adverse to the interest of defendant No.5. Likewise, no material has been placed before the Court to demonstrate that defendant No.5 proposes to impeach the testimony of DW.1 on any independent issue. In the absence of any such conflicting stand, the allegation that defendant No.5 is not colluding with defendant Nos.1 and 2 remains a mere assertion unsupported by any convincing material.

10. The objection raised by the plaintiffs also merits consideration. If defendant No.5 is permitted to postpone his cross-examination until after completion of the plaintiffs' cross-examination, defendant No.5 would have the distinct advantage of knowing every aspect elicited during the plaintiffs' cross-examination. Such an opportunity may enable defendant No.5 to put questions intended to explain, clarify or remove deficiencies brought

out during the plaintiffs' cross-examination. Therefore, this would virtually permit defendant No.5 to fill up lacuna in the evidence of DW.2. The procedural law governing trial does not contemplate such an advantage in favour of one contesting defendant who substantially supports another defendant.

11. The contention of defendant No.5 that the plaintiffs should invariably cross-examine DW.2 first also cannot be accepted as a absolute proposition. The order in which cross-examination is conducted depends upon the nature of the pleadings, issues involved and the discretion of the court in regulating the trial. Such discretion has to be exercised keeping in view the principles of fairness and avoiding prejudice to any party. In the present case, no prejudice whatsoever is shown to be cause to defendant No.5 if he cross-examines defendant No.1 in the ordinary course. On the contrary, granting the relief sought would likely cause prejudice to the plaintiffs.

12. It is also pertinent to note that Section 151 of C.P.C., cannot be invoked merely because of party seek a more convenient procedure. Unless it is established that the existing procedure would result in failure of justice or

abuse of the process of court, inherent power cannot be exercised to modify the normal course of trial. Defendant No.5 has failed to demonstrate the existence of any exceptional circumstances warranting exercise of such the inherent jurisdiction. Therefore, considering pleadings of the parties, the nature of the defence set up by defendant No.5, the absence of any real conflict between defendant Nos.1, 2 and 5 and the possibility of prejudice to the plaintiffs if the application is allowed, this court is of the considered opinion that defendant No.5 has failed to establish any valid ground for grant of relief sought. Hence, the point No.1 is answered in the **Negative**.

13. **Point No.2**:- In view of my above findings and discussion made on point No.1, I proceed to pass the following:

ORDER

IA No.XX filed under Section 151 of C.P.C., by the defendant No.5 is hereby dismissed.

It is hereby directed that defendant No.5 shall first proceed with the cross-examination of DW.2, if he intended to cross-examine the said witness. Thereafter, the plaintiffs shall be at liberty to cross-examine DW.2.

The parties shall complete the cross-examination in accordance with law without seeking unnecessary adjournments.

No order as to costs.

Call on 13-07-2026 for cross-examination of DW.2.

(Dictated to the stenographer, transcribed and computerized by him and corrected by me, then pronounced in the open Court on this the 1st Day of July, 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

