

24-07-2025:

ORDER ON I.A.NO.12 AND 13

The defendant No.5 the present IA No.12 Under section 151 of CPC and IA No.13 under Order 18 Rule 17 R/w 151 of CPC to recall PW.1 for the purpose of cross examination.

On the contrary, the learned counsel for plaintiffs have filed the objection contending that the defendant No.5 colluding with the defendant No.1 and 2 he is much interested to protect of some of the suit properties are said to be his self acquired properties. The evidence recorded on additional issue No.1 is enough to decided his alleged contention of self acquisition. Further he contended that the PW.1 is aged 82 years and suffering from cancer decease and he has been subjected to surgical operation. Further it is also stated the PW.1 was fell down in the bath room and he was unconscious conditions and was admitted

in hospital from 13-02-2025 to 22-02-2025 in coma conditions. Further it is contended that the defendant No.5 has not given any satisfactory reason for non cross examination of PW.1 after the receipt of the case file from Hon'ble High Court.

Herd. Perused records.

While the case was posted for objection to IA No.12 and 13. Advocate for plaintiffs have files memo on dated 28-02-2025. Stating that the plaintiff No.2 died on 26-02-2025.

Thus it is an admitted position that the PW.1 has died on 26-02-2025, as supported by the memo filed. In such circumstances, recalling the said witness for cross examination is not tenable, as the witness is no more.

Order 18 Rule 17 R/w 151 of CPC enables the court to recall a witness for further examination at any stage of the

suit but such power cannot be exercised in a situation where the witness sought to be recalled is deceased.

Accordingly IA No.12 and 13 filed by the defendant No.5 Under section 151 of CPC and Under Order 18 Rule 17 R/w section 151 of CPC respectively are liable to be dismissed as infructuous.

Accordingly IA No.12 and 13 applications stands dismissed.

Advocate for plaintiffs sought permission to amend the cause title of the plaint in view of the order dated 18-07-2025 IA No.15 appointing plaintiff No.2B as next friend of mentally infirm plaintiff No.2. Accordingly advocate for plaintiffs is permitted to amend the plaint and furnish amended plaint.

Call on 01-08-2025

Senior Civil Judge, Bailhongal.

