

26-11-2025:

ORDER ON IA No.16 & 17

IA No. 16 is filed by the defendant No.5 under Section 151 of CPC, seeking recall of the order dated 01-08-2025 and reopening of the plaintiffs side.

IA No.17 is filed by the defendant No.5 under Order XVIII Rule 17 of CPC, seeking to recall plaintiff No.1(b) for cross-examination, on the ground that defendant No.5 did not have an

opportunity to cross- examine deceased plaintiff No.2.

In the affidavits filed in support of the applications, it is stated that the plaintiff No.2 Shri. Ajitkumar. A. Inchal who was examined as PW.1, expired during the pendency of the proceedings. Defendant No.5 contends that he had filed an application seeking permission to cross-examine PW.1, but the said application was dismissed as PW.1 expired. It is further stated that the plaintiff No.2(b), the son of the deceased PW.1, has stepped into shoes of his father and is presently prosecuting the suit, and therefore, he ought to be recalled for cross-examination. Hence, he prayed for allowing the applications.

The learned counsel for plaintiffs has filed the objections contending that the application are not prepared in accordance with prescribed rules and are liable to be dismissed in *limine*. It is further contended that the order dated 01-08-2025 is correct and legal and there is no necessity to recall the same. It is also

contended that the applications are not maintainable in the IF law.

Heard both sides. Perused the record.

It is not in disputed that plaintiff No.2 who had been examined as PW.1 expired before the defendant No.5 could cross-examine him. It is also undisputed that plaintiff No.2(b) the son and legal representative of the deceased PW.1, as not entered the witness box nor as he tendered any evidence before this Court.

The prayer of defendant No.5 in IA No.17 is to “recall” plaintiff No.2(b) for cross-examination. However, a witness can be recall only if he has earlier been examined. Since plaintiff No.2(b) has never been examined as a witness, the question of recalling him for cross-examination does not arise. The entire premise of IA No. 17 is therefore, misconceived and not legally maintainable.

In the absence of any witness examination by plaintiff No.2(b) the prayer in IA No.16 to reopen the plaintiffs’ side also does not survive

for consideration. The reopening of the plaintiffs evidence cannot be ordered merely for the purpose of cross-examining a person who has not entered the witness box. The remedy sought by defendant No.5 is wholly inconsistent with the procedural requirement and cannot be granted. Therefore, no valid grounds are made out to recall the order dated 01-08-2025. Hence this Court concluded that the applications lack merit and are liable to be dismissed. So, this Court deems it fit to pass the following:

ORDER

IA No.16 and 17 are hereby dismissed.

No order as to cost.

Call on for evidence of defendants
by 06-12-2025.

(Dictated to the stenographer, transcribed by him, revised, corrected, and signed by me, then pronounced in the open court on this day of 26th November 2025)

Senior Civil Judge, Bailhongal.