

ORDER ON IA.NO.30, 32 to 34 UNDER ORDER 18
RULE 17 R/W SECTION 151 OF CPC AND SECTION
151 OF CPC AND UNDER ORDER 8 RULE 1(a) R/W
SECTION 151 OF CPC UNDER ORDER 16 RULE 1
R/W SECTION 151 OF CPC

The present applications have been filed by the defendant No.6 by seeking to recall the stage of cross examination of PW.1 and to produce documents and permission to furnish list of witness.

2. In the annexed affidavits the defendant No.6 has stated that, the suit has filed for partition and separate possession, recently plaintiff has impleaded him in the suit and he has filed written statement. Further, recently he met one person by name Laxman S/o Fakirappa Helavar of Hosahadagali village of Haliyal Taluk who maintained the genealogy of family Hammini and he found that the plaintiff is no way concerned to branch of Irappa Hammini. Further, he intends to cross examine PW.1 and also furnish certain documents and submit list of witness, therefore he has sought to allow the applications.

3. Per contra the plaintiff has filed common objections to IA No.30, 32, 33 and filed separate objection to IA No.34 by contending that, the defendant No.6 in active collusion with defendant No.1 to 5 to defeat claim of the plaintiff making false attempt by filing applications. Further, the original plaintiff by colluding with defendant No.6 got filed memo to withdraw the suit but the defendant No.3 who is present plaintiff got transposed as one of the plaintiffs. In this case already the evidence of both side has been concluded and in between evidence of defendant No.2 was recalled and also cross examined by defendant No.6.

4. Further, the defendant No.6 has appeared in the

year 2014 and cross examined PW.2 and 3 and also fully cross examined PW.1, hence there is no necessity to cross examine PW.1 again and he can not cross examine of PW.1 with relationship. Further, the document sought to be produced is not admissible and there is no need of producing the documents and getting examined the witnesses and the genealogy produced by the plaintiff is admitted by the defendant No.6, hence admitted fact need not be proved therefore, on all these grounds sought to reject the applications.

5. Heard both side perused material on record.

6. The present suit has filed for relief of partition and separate possession and declaration. On perusal of order sheet it reveals that, when the matter was posted for cross examination of DW.2, the defendant No.6 has filed the present applications.

7. During the course of argument the counsel for defendant No.6 has argued that, at the time of passing order in WP No.107309/2024, Hon'ble High Court of Karnataka has observed at para No.4 that, the defendant No.6 has contested the genealogy, hence he is required to cross examine the defendant No.2 and at para No.8 the present defendant No.6 has been given liberty to cross examine the plaintiff and other defendants in respect of defence taken by him regarding plaintiff is not brother of Dundappa and Basappa. Perused said order and it is found that, the liberty has been accorded by Hon'ble High Court of Karnataka to cross examine plaintiff and defendants, thereafter the defendant No.6 has filed the present applications. During course of argument, counsel for plaintiff contended that, already the fact has been admitted by defendant No.6 and already the defendant No.6 has cross examined the PW.1 about relationship and genealogy, hence there is no necessity to recall the cross examination of PW.1.

8. It is to be noted that, on going through cross examination of PW.1 and the observations made by Hon'ble High Court of Karnataka in said writ petition, still there are certain contentions intending to be taken by defendant No.6 with respect to relationship of plaintiff with Dundappa and Basappa and if one more opportunity will be given to the defendant No.6 to further cross examine PW.1 with respect to particular said aspect, it aids the court to decide the lis on merit and as per natural justice, the final opportunity needs to be given to the defendant No.6 to prove his defence.

9. Further, defendant No.6 is intending to produce document, but plaintiff has objected by contending that said proposed document is not admissible in evidence and not relevant, with respect to relevancy, admissibility of the documents, it can be looked into at proper stage. Further, and delay caused by the defendant No.6 can be compensated by imposing cost.

10. The Order XVI Rule 1(a) of CPC contemplates that without applying for summons, the party can bring the witness to the court and get examined. Under such circumstances, when statute itself provides right to the party to give his evidence without applying for summons, it is necessary to permit the defendant No.6 to prove his defence by getting examined the witness as sought in the IA No.34 and plaintiff will get opportunity to cross examine the witness and if one more opportunity will be given to defendant No.6 to further cross examine PW.1 and to get examined the witness, it avoids multiplicity of proceedings. Therefore this court proceeds to pass the following.

ORDER

The I.A.No.30, 32 to 34 filed
by the defendant No.6 Under

Order 18 rule 17 and U/sec.151 of CPC and Order 8 rule 1(a) and Order 16 rule 1 and 3 of CPC are hereby allowed on cost of **Rs.1000/-**.

Accordingly the further cross examination of PW.1 is hereby recalled to cross examine only with respect to specific defence with regard to plaintiff not being the brother of Dundappa and Basappa and defendant No.6 is permitted to lead further evidence of witness shown in IA No.34 after conclusion of evidence of DW.2 and document produced by defendant No.6 along with IA No.33 is taken on record subject to admissibility and proof, relevancy.

For further cross examination of PW.1 and defendant No.6 shall cross examine PW.1 without fail and without seeking adjournment.

Call on 07.08.2026.

**Addl. Civil Judge & JMFC,
Gokak.**