

KABG600004892014



**IN THE COURT OF SENIOR CIVIL JUDGE, HUKKERI,
ITINERARY COURT AT SANKESHWAR.**

*Before: Sri K.S.Rotter, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.*

Dated this 17th day of June 2023

O S No.88/2014

Plaintiffs: Shri Vishnu Yallappa Patil and another
V/s

Defendants: Shri Vasant Dattatrey Gavade and others.

Parties to IAs No.XX

Applicant/Plaintiff:

1. **Shri Vishnu Yallappa Patil,**
Age: 38 years, Occ: Agriculture,
R/o: Modage, Taluk: Hukkeri,
District: Belagavi.
(By Shri R. B. Patil, Advocate)

-Versus-

Opponent/Defendant No.1B:

1. **Shri Dayanand Vasant Gavade,**
Age: 34 years, Occ: Agriculture,
R/o: Modage, Taluk: Hukkeri,
District: Belagavi and others.
(By Shri R.V. Joshi, Advocate)

Stage of suit: For further evidence of defendants

ORDERS ON I.A. NO.XX

The plaintiff has filed this IA No.XX under Order XVIII Rule 17 R/w Section 151 of Civil Procedure Code, for the purpose of recalling DW-2 for further cross-examination.

2. In support of the above said application, the plaintiff has filed affidavit stating the reasons for the same and prayed for allowing IA.
3. On the other hand the defendant No.1B has filed objection to the IA and prayed for rejection of IA No.XX.
4. Heard the arguments perused the applications and objections.
5. The points that arise for my consideration are as under;
 1. *Whether it is just and necessary to reopen the case and to recall the Dw-2 for the purpose of Cross examination?*
 2. *What order?*
6. My answer to the above points is as under:
 1. In the affirmative
 2. As per the final order for the following:

REASONS

7. **Point No.1:** This is a suit filed by the plaintiffs for the relief of partition and separate possession against the defendants in respect of the suit properties. It is seen from the records that, after registering the suit, the defendants appeared and filed their written statement by denying the contentions of the plaintiffs. Thereafter, this court has framed the issues and the plaintiff has examined himself as PW1 and the plaintiff in support of his contentions also examined 3 witnesses as PW2 to 4 and produced 18 documents and closed their side. The defendants in support of their defence have examined 2 witnesses as DW1 & 2 and now the case is fixed for further evidence of defendants. At this stage, the plaintiff has filed this application for recalling of DW.2 for further cross examination.
8. The plaintiff in his affidavit filed in support of the application stated that, the defendant No.1b has led his evidence as DW.2 and the advocate for the plaintiff cross examined the said witness and the said case was posted for further cross examination of DW.2 on 09.03.2023. It is stated that, as the counsel for the plaintiff was under medical treatment and on the said date his counsel went to Gadhinglaj for his medical treatment of his fractured injuries and

was hospitalized for 7 days and after his discharge an appointment was fixed with doctor for his regular checkup which was very urgent. Hence, it was not possible for him to present before this court, but on the said day, this court was take further cross-examination of DW.2 as nil by refusing the prayer of junior counsel. It is further stated that, as the present suit is for partition, hence further cross-examination of DW-2 is just and necessary. On the other hand, the advocate for defendant No.1B in his objection stated that, in spite of grant of sufficient time and opportunity to the plaintiff for cross-examination of DW.2, he has not cross examined the DW.2. It is further alleged that, the plaintiff on one or the other pretext is getting postponed the case after the evidence of the plaintiff and has produced some documents styled as partition deed which were unregistered and created in order to prolong the trial. Hence, there is inordinate delay by the plaintiff in conducting the matter. It is also stated that, the plaintiff not shown any reasons for reopening the case and for recall of DW-2 for cross examination and prayed to dismiss the IA.

9. The advocate for plaintiff argued that, it is very necessary to put forth the case of the plaintiff by way of cross examination of

DW-2 so as to enable this court to come to definite conclusion. Hence, the advocate for plaintiff contended that, cross examination of DW-2 is necessary. If application is not allowed, the plaintiff will be put irreparable loss. Hence, he prayed for allow of IA. On the other hand, the advocate for the defendant No.1B stated that, inspite of grant of sufficient time and opportunity, the plaintiff has not cross examined DW.2 and as such, present I.A is false and not maintainable. Further it is submitted that, the plaintiff has not shown sufficient reasons for the application and only to drag on the matter the plaintiff has filed this IA. Further it is submitted that, the plaintiff is in the habit of filing applications for delaying the case. So the advocate for defendant No.1B prayed for dismissal of IAs.

10. I have perused the IA and affidavit and objections filed by the defendant No.1B and other connected case papers. It is the contention of the plaintiff that, on the date of further cross-examination of DW.2, the advocate for the plaintiff went to Gadhinglaj for his medical treatment as he has got appointment from the doctor and hence, it is not possible for him to appear before this court, but this court has not granted the time for further

cross examination of DW-2 on that day. It is stated that, for complete adjudication of the matter in dispute further cross-examination of DW-2 is just and necessary. It is settled proposition of law that parties should be given sufficient opportunity to put forth their case. It is true that, the plaintiff should have been diligent in cross examining the DW-2 on the date fixed but on that ground the application cannot be rejected. Since, it would be as good as shutting a heavy important piece of evidence of the defence. In my view if the application is allowed, no injustice would be caused to the defendant No.1B. On the other hand, if the application is not allowed, injustice and hardship will be caused to the plaintiff/applicant. Anyhow whatever inconvenience caused to defendants by recalling the Dw-2 and for reopening the case may be compensated by imposing reasonable cost on the plaintiff. Hence, the question of causing prejudice to the defendants does not arise. Therefore, I am of the opinion that, the plaintiff has made out grounds for recall of Dw-2 and for re-opening the case for the purpose of further cross-examination. Hence, without much discussion, I answer point No.1 in affirmative.

11. **Point No.2:** For the forgoing reasons, I proceed to pass the following order:

ORDER

IA No.XX filed by the plaintiff under Order XVIII Rule 17 R/w Section 151 of Civil Procedure Code is hereby allowed on cost of Rs.500/-.

Consequently, DW-2 is hereby recalled for the purpose of further cross-examination.

(Dictated to Stenographer directly on computer in open court, typed by her corrected by me and then pronounced in open court on this 17th day of June 2023.)

-Sd/-

(K. S. Rotter)

Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.