

ORDERS ON I.A. No. XX

The counsel for the plaintiffs have filed these application under Order 18 Rule 17 r/w Sec. 151 of CPC for recall of DW 4 & 5 to cross-examine by allowing this application in the interest of justice.

2. On the other hand, the counsel for defendants No.2, 4 & 6 have filed objection to the said applications by denying the entire contents of the affidavit. Further it is contended that, the DW.4 & 5 already adduced chief examination since long back. In spite of sufficient opportunity given to the plaintiffs did not cross-examine the DW.4 & 5. The plaintiffs have not made any reasonable grounds to allow the application and prayed to dismiss the application with cost.

3. Per contra, the counsel for the plaintiff have submitted no objection to allow the application.

4. Heard both side counsel and perused the applications, affidavit and objection filed by the parties.

5. Now the points that would arise for my consideration is as follows:

“Whether application filed by plaintiffs to recall of DW-4 & 5 for cross-examination is deserves to be allowed?”

6. My finding to the above point in the Affirmative for the following:

REASONS

7. It could be seen from the record that, this suit is filed by the plaintiffs for relief of partition and separate possession as against the defendants. Having gone through available materials on record, the counsel for plaintiffs filed this application stating that the stage of suit is posted for arguments. At this juncture, plaintiffs have filed sworn affidavits stating that, in this case defendants No.6 adduced chief examination, but, due to ill-health of plaintiffs, they could not able to meet their counsel in time. Hence the cross-examination of DW 4 & 5 is taken as nil. The cross-examination of DW 4 & 5 is very much necessary for proper adjudication of the case.

8. On perusal, there is serious objection regarding re-call of DW 4 & 5 by the plaintiffs. No doubt the case is posted for arguments. It is to be noted that, the defendants No.7 is already cross-examined the DW 4 & 5, but plaintiffs have not cross-examined the said witnesses. However, the liberty has to be given to the party, who came with valid reasons for cross-examination of DW 4 & 5 for fair adjudication of the

matter. If the application is not allowed the plaintiffs will be put great inconvenience and hardship. On the other hand, no hardship and inconvenience caused to defendants No.2, 4 and 6, if application is allowed. Therefore, the application filed by the plaintiffs is deserved to be allowed in the interest of justice. Nevertheless, the delay is condoned by imposing costs. In the result, this court proceed to pass the following;

ORDER

I.A.No. XX filed by the plaintiff hereby
allowed with cost of Rs. 500/-.

DW.4 & 5 are recalled. Hereby directed
to lead cross-examination of DW.4 & 5.

Call on 09.08.2023

Civil Judge & JMFC
Hukkeri

