

KABK210003832015



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C, MUDHOL,
AT: MUDHOL.**

Present:

SMT.SARASWATI HOTAKAR,
B.A., LL.B.,
Addl. Civil Judge & JMFC., Mudhol.

Dated this the 10th day of July – 2024

O.S.No.60/2015

Plaintiff/s:

1. Sri. Parasappa S/o Managenappa Jeeragal @
Dhanagar.

-V/s-

Defendant/s:

1. Sri. Bhutalappa S/o Basappa Kunchanur
And others.

IA No.13

Applicant/Defendant No 8:

1. Sri. Bhutalappa S/o Basappa Kunchanur
Age: 59 years, Occ: Agriculture,
R/o: Mudhol, Tal: Mudhol.

-V/s-

Opponent/s:Plaintiff/s:

1. Sri. Parasappa S/o Managenappa Jeeragal @
Dhanagar.
Age: 62 years, Occ: Agriculture,
R/o. Mugalkhod, Tal: Mudhol.

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Plaintiff by Sri I.H.A, Advocate
Defendants No 1, 2, 4 to 7, 10 to 12, 14,
19, 27, 28- Ex-Parte
Defendants No 3, 8 & 9 by Sri. P.M.V, Advocate
Defendants No 15 to 18 by Sri. T.T.M, Advocate

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ORDER ON IA NO.13 U/o. 18 RULE 17 R/W. Section 151
of CPC

The Applicants/defendants No 3 to 9 have filed the application U/Or. 18 Rule 17 R/w Sec. 151 of C.P.C to recall PW.1 for the purpose of further cross-examination.

2. In the affidavit annexed IA.No.13 defendant No.8 contending that, has he was not well and old aged, he was unable to give instruction to his earlier counsel to cross examine the PW1 at the same time court was pleased to take the cross examination of PW.1 as nil on 18/04/2024. The defendants have narrated the detail facts in their W.S. If they are not permitted to cross examine PW.1 then they will be put to heavy and irreparable loss and injury hence prays to allow the application.

3. On the other hand counsel for plaintiff filed objections stating that application is not maintainable. And further contended that Order 18 Rule 17 of CPC empowers the court to recall the witness and put him questions, but there is no

provisions of law to recall witness at the intend of party. The evidence of plaintiff is over now the case posted for further plaintiff side evidence, hence prays to reject the application.

4. I have heard the arguments of learned counsel appearing for plaintiff and defendants on IA.No.13. Perused the material on record. The following point arises for my consideration.

1. Whether the deft. No.8 has made out grounds to allow IA.No.13?
2. What order?

5. My answer to point No.1 in the **affirmative**, for the following:

::REASONS::

6. Point No.1: It is a suit for partition and separate possession in respect of suit schedule properties. Defendants have appeared and filed detailed written statement denying the plaint averments.

7. Now the case is for further plaintiff evidence. This court despite of lot of opportunities to cross examine PW.1, the defendants failed to cross examine the plaintiff's witness, considering the said fact and also considering the year of the suit. This court taken cross of PW.1 as nil and posted the stage for further plaintiff evidence. Hence the defendants filed the present application.

8. On the other hand, the learned counsel for plaintiff has submitted objections to the above application. At this juncture it is proper to refer the provision under order 18 Rule 17 of CPC which reads as follows-- *17. Court may recall and examine witness: "The court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit"*. No doubt as per the aforementioned provision enables the court to recall any witness for the purpose of their evidence and the power is with the court and the party cannot exercise the power under order 18 Rule 17 of CPC as a right. But the counsel has also filed the present application under section 151 of CPC seeking recall of PW.1. Wherein section 151 of CPC provides inherent powers to this court to do any act within the preview of law. Hence, in the application defendant No 8 contended that due to his ill health and old age it was not possible for him to give instructions to his counsel. Since the reason assigned is worth one but the application being filed at this belated stage shall be allowed on cost of Rs. 500/-. Accordingly I answer point No 1 in the Affirmative.

9. Point No.2: In view of the above discussion I proceed to pass the following

::ORDER::

IA No.13 filed by defendants No 3 to 9
U/o.18 Rule 17 R/w Sec.151 CPC seeking to
recall PW1 for cross examination is hereby
allowed on cost of Rs.500/-.

Accordingly, PW.1 is recalled for the
purpose of cross examination.

(Dictated to the stenographer directly on to the computer typed by her, transcript revised, corrected and then pronounced by me in the open court this the day of **10th day of July 2024**)

(Smt.Saraswati Hotakar)
Addl. Civil Judge & JMFC,
Mudhol.