

KABK710002632021



O.S./38/2021

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT: JAMKHANDI.**

PRESENT

**Smt.Shreedevi,
B.Com LLB,
Addl. Civil Judge & JMFC,
Jamkhandi.**

**Dated this the 03rd day of July- 2026
O.S. No.38/2021**

1. Basappa S/o Annappa Nyamagouda
Age: 45 years Occ: Agriculture,
R/o Shiraguppi village Tq: Jamkhandi
Dist:Bagalkot
And another.

.....Plaintiffs.

(By Shri.V.S.B Advocate)

- Vs -

1. Smt.Jayashree W/o Sidagouda Nyamagouda,
Age: 45 years Occ: Household work,
R/o Sidrameshwar Colony, Kudachi Road,
Hunnur Tq: Jamkhandi, Dist:Bagalkot
And others.

.....Defendant.

(By Shri.R.R.K , Advocate)

I.A.No.XII to XIII

1. Basappa S/o Annappa Nyamagouda
others.

.....Applicants/Plaintiffs

- Vs -

1. Smt.Jayashree W/o Sidagouda Nyamagouda,
others.

.....Opponent/Defendants

Sl. No.	Details	Particulars
1	Provision under which the application is filed	1) <u>I.A. No.XII.</u> Under Section 151 of CPC. 2) <u>I.A. No.XIII</u> Under Order XVIII Rule 17 R/w Section 151 of CPC.
2	Relief sought for	Reopen Cross examination of DW1and To recall of DW-1
3	The date on which the application is filed	24.06.2026
4	Number of the applications	I.A.No.XII and XIII
5	Stage of the case	For Arguments
6	The date on which the objections are filed by the different opponent/s	Not filed

	The date on which the orders were passed on the said application/s.	03.07.2026
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COMMON ORDER ON IA NO.XII and XIII

The learned counsel for the plaintiffs has filed the present applications under Section 151 of the Code of Civil Procedure, 1908, in I.A. No. XII and under Order XVIII Rule 17 r/w Section 151 of the Code of Civil Procedure, 1908, in I.A. No. XIII, praying to reopen the cross-examination of DW-1 and to recall DW-1 for cross-examination.

2. In the affidavit filed in support of the applications, Plaintiff No. 2 has stated that he was suffering from ill health and, therefore, could not provide necessary instructions to his counsel. In the meanwhile, this Court recorded the cross-examination of DW-1 as 'Nil'. It is further stated that, if the applications are allowed, no prejudice would be caused to the defendants. Hence, the plaintiffs have prayed to reopen the stage of

cross-examination of DW-1 and to recall DW-1 for further cross-examination. Accordingly, they have sought to allow the applications.

3. Despite sufficient opportunity given the counsel for the defendants has not filed his objections.

4. On the basis of the pleadings and applications the following points arise for determination:

1. Whether the plaintiffs have made out sufficient grounds to allow the applications?
2. What Order?

5. Heard both the counsels. Perused the available material on record and my findings on the above points are as below;

Point No.1:- In the Negative.

Point No.2:- As per final order for the following;

:: R E A S O N S ::

6. Point No.1:- The present applications have been filed by the plaintiffs seeking reopening of the cross-examination of DW-1 in I.A. No. XII and recall of DW-1 in I.A.

No. XIII. The grounds urged in the applications are that Plaintiff No. 2 was suffering from ill health and, therefore, could not furnish necessary instructions to his learned counsel during the course of the cross-examination of DW-1. Perused the applications, the affidavits filed in support thereof, the order sheet and the entire records of the case.

7. The records disclose that this Court had afforded sufficient and reasonable opportunities to the plaintiffs to cross-examine DW-1. It is further evident from the deposition of DW-1 that he has been cross-examined at considerable length by the learned counsel appearing for the plaintiffs. Therefore, the contention that Plaintiff No. 2 could not instruct his counsel on account of ill health cannot, by itself, be accepted as a sufficient ground to reopen the cross-examination or to recall DW-1. Further, the records do not disclose that the cross-examination of DW-1 was recorded as 'Nil'. On the contrary, the deposition clearly reveals that DW-1 has already been extensively cross-examined. The plaintiffs have not explained as to what material questions were

omitted during the cross-examination or how any prejudice has been caused to them. In the absence of any bona fide and sufficient cause, the discretionary jurisdiction of this Court under Section 151 of the Code of Civil Procedure, 1908, and Order XVIII Rule 17 read with Section 151 of the Code cannot be invoked. The applications appear to have been filed only to protract the proceedings and delay the disposal of the suit. It is well settled that the power to recall a witness or reopen evidence is discretionary and is to be exercised sparingly, only when the Court is satisfied that such recall is necessary for the just decision of the case. The plaintiffs have failed to make out any such exceptional circumstance warranting exercise of the said discretion. Accordingly, this Court is of the considered opinion that the plaintiffs have failed to establish sufficient cause to reopen the cross-examination of DW-1 or to recall DW-1 for further cross-examination. Hence, the applications deserve to be dismissed. Accordingly this court answered the Point No.1 in the **Negative**.

8. Point No.2:- In the aforesaid reasons, this court proceeds to pass the following;

: O R D E R :

I.A. Nos. XII and XIII are filed by the plaintiffs under Section 151 of the CPC, Under Order XVIII Rule 17 read with Section 151 CPC are hereby rejected with costs of Rs.200/- for each application payable to TLSC Jamkhandi.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **03rd day of July- 2026**)*

**Sd/-
(Smt.Shreedevi),
Addl. Civil Judge & JMFC,
Jamkhandi.**