

:: ORDERS ON I.A NO.VIII ::

The defendant No.4 has filed this application U/sec.151 of CPC, seeking permission to cross examine the DW-1.

2. On the other hand the learned advocate for plaintiff has filed his objections to this application.

3. Heard both the sides on I.A.VIII and following points arises for my consideration;

1. Whether defendant No.4 has made out sufficient grounds to cross examine the DW-1 by him as claimed in the application?

2. What order?

4. My answers to the aforesaid points are as under:-

Point No.1- In the Negative

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

:: REASONS ::

5. **Point No.1:-** In the affidavit the defendant No.4 has contended that the plaintiffs have filed suit for partition and separate possession in respect of landed property bearing R.S.No.144/3A measuring 03 acres 21 guntas situated at Madhurakhandi village. This defendant No.4 has purchased the suit property through registered sale deed from defendant No.1 Basappa Puthani for Rs.5,75,000/- on 21-10-2013, since then this defendant No.4 is in peaceful possession and enjoyment of the suit property. The defendant No.1 submits his written statement and he has stated that he has sold out the entire suit land to this defendant. No.4. But in cross examination by the plaintiffs he has admitted his signature which is appeared on “M|àUÉ ¥ÀvÀæ” and the said document is marked as Ex.P-13, and his signature is

marked as Ex.P-13(A). But the said document speaks about relinquishment of property to the extent of 25 guntas by the defendant No.1 to the plaintiff No.1 in suit lad. Therefore, it is necessary to cross examine the DW-1 because who has stated contrary to the defence set up by the defendant No.1 himself and as well as defendant No.4 and the said admission given by defendant No.1 is effected legal right of this defendant No.4. Hence cross examination of DW-1 is necessary and it is not against law, and also defendant No.1 is colluding with plaintiffs. Therefore it is necessary to cross examine the DW-1 by this defendant No.4. Hence he prayed to allow the application.

6. On the other hand the learned advocate for plaintiff has filed his objections, wherein he has contended that the defendant No.1 and 2 have sold out the suit land to defendant No.4 and they filed identical WS, and have not denied the allegations both in their WS, and they are sailing on same boat. The interest and defence of defendant No.1 to 4 are all one and the same and this defendant No.4 is claiming his right through defendant No.1 and 2 only who are sellers to defendant No.4. The plaintiffs cross examined the DW-1 who admitted many things more particularly Ex.P-13 document which is marked at the time of cross of DW-1. in respect of Ex.P-13 document the defendant No.1 to 4 denied specifically in their WS. Some admissions have come in the cross of DW-1 regarding Ex.P-13. To take away, brush aside the admissions of DW-1, the defendant No.4 wants to cross examine defendant No.1 and it is not their case too. There

is no law to say that the defendants will cross examine the defendants when they are deriving their rights from each others. The defendant No.4 is inventing and interested to cross examine the DW-1 who is seller to defendant No.4. Hence he prayed to dismiss the application with heavy costs.

7. On going through the contents of affidavit of defendant No.4 it clearly appears that during the cross examination of DW-1 the Ex.P-13 document has confronted to the DW-1 and DW-1 has admitted the said document. When such being the case the defendant No.4 who is claiming his rights through defendant No.1 and 2 cannot cross examine the DW-1 to take away the admissions given by DW-1 during his cross examination for the shake of helpful to the case of defendant No.1, and it is against to the law that one cannot take away the admissions given by the parties by way of cross examine one of the same party to take benefit for his case. Therefore, by considering, facts and circumstances involved in this case the defendant No.4 cannot be allowed to cross examine the DW-1 as contended in the affidavit. Therefore, the point for consideration is answered in the **Negative**.

8. **Point No.2:-** As per the reasons, stated in point No.1, I proceed to pass the following;

:: O R D E R ::

The I.A.No.VIII filed by the defendant No.4 U/sec.151 of CPC, is hereby **dismissed**.

O.S.No.113/2014.

Call on for cross of DW-1 finally by 27-07-2016.

Sd/-
Pril. Civil Judge & JMFC, Jamkhandi.