

**ORDER ON I.A's**

The plaintiff has filed I.A Under order 18 Rule 17 of C.P.C, for seeking to re-call the order of discarding the evidence of P.W-2 and 3 for cross examination.

2. It is stated in the affidavit that the previous dates of hearing the P.W-2 and P.W-3 were examined as plaintiff witness and case was posted for cross of P.W-2 and P.W-3. On 15.09.2023 both were present but on day since the presiding officer were under transfer the court was not taken the evidence and posted the matter on 27.09.2023, that the said P.W-2 and P.W-3 are agriculturalist and involved in their forming activities. And since there was the continuous rain in couple of days before the said dates of hearing. If this application is not allowed, great injury will be caused to the plaintiff. On the other hand no harm will be

caused to the defendants. Hence, he has prayed to allow the application.

3. The counsel for the defendant has filed objection to the above application. In the said objection he has stated that, the application filed by the plaintiff is not maintainable both in law and on facts. The same is liable to be dismissed. The P.W-2 and P.W-3 were absent and they were not available for cross examination. The court has provided ample opportunity to the plaintiff, though P.W-2 and P.W-3 were deliberately absent. It is further submitted that, the plaintiff has not assigned valid reasons for their absence and the plaintiff has not whispered anything regarding inconvenience. Hence, he has prayed to dismiss the application.

4. Heard both sides, perused records.

5. The plaintiff has filed present suit against the defendant for the relief of Partition and Separate possession. The matter is now set forth for defendant evidence. At this stage the plaintiff has come up with present I.A, on the ground that same are necessary to recall the P.W-2 and P.W-3 for cross examination.

Perused the application, objection and order sheet it discloses that, on 09.08.2023 two witnesses were examined as P.W-2 and P.W-3, on the same day the matter was posted for cross examination of P.W-2 and P.W-3. Thereafter P.W-2 and P.W-3 have been continuously absent they were not present before the court for cross examination. On 19.08.2023, 05.09.2023, 15.09.2023 and finally 27.09.2023 they were absent, the counsel for plaintiff prays time to keep present the P.W-2 and P.W-3 in the next date of hearing. But his prayer was rejected and the evidence of P.W-2 and P.W-3 was

discarded. But in the application the plaintiff has stated that on 15.09.2023 P.W-2 and P.W-3 were present but on that day the presiding officer was under transferred. Therefore the court was not taken the evidence. On perusal of order sheet it clearly discloses that on the aforesaid day witnesses were absent. Thereafter court has given two opportunities, though they are absent. Moreover no valid reasons are assigned in the affidavit to allow the said application. This is the matter of 2008, after chief examination four opportunity has been given for cross examination. In the considered opinion of the court that, four opportunity is enough in this matter. Hence the application filed by the plaintiff is not sustainable and maintainable at this stage. Hence, I pass the following:

**O R D E R**

The I.A filed by the plaintiff for recall the order of discarding the evidence of the PW.2 and PW.3 for cross examination is rejected with cost of Rs. 200/-.

For defendant evidence by

**-Sd-**

**Addl. Civil Judge & J.M.F.C.  
Doddaballapura.**