

**Common Order on IA NO.IX & X**

The defendants have filed an application U/Sec.151 of CPC prays that to reopen the case from the stage of defendants evidence and filed an application U/O 18 Rule 17 R/w Sec.151 of CPC prays that to recall PW-1, PW-2 and PW-5 for cross-examination by allowing these applications in the interest of justice.

2. In support of these applications the defendant No.1 has swearing her affidavits.

3. Per contra the plaintiffs have filed objection.

4. Having heard on both the side. The following points will arise for my consideration:-

- 1) Whether the applications filed by the defendants U/Sec.151 of CPC and U/O 18 Rule 17 R/w Sec.151 of CPC are deserves to be allowed?
- 2) What Order?
5. My answer to the above points is as under:-  
Point No.1 : In the Affirmative  
Point No.2 : As per final order  
for the following:

**REASONS**

6. **Point No.1:-** The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession over the suit schedule properties. The plaintiffs have adduce the oral evidence as PW-1 to PW-5 and meanwhile the PW-3 and PW-4 are not appeared before the court and their evidences are expunged and sufficient opportunity being provided to defendants to cross-examine the PW-1, PW-2 and PW-5 but not cross-examined as such the cross-examination of said witnesses are taken as nil. The defendants have filed an IA No.7 and 8 to recall the above said witnesses for cross-examination and thereafter the said witnesses are appeared before the court but the defendants have not cross-examined them as such once again the cross-examination of PW-1, PW-2 and PW-5 is taken as nil. Meanwhile the defendants have filed the present applications stated that the counsel for defendants is ready for cross-examination, but the court has passed an order that cross-examination of PW-1, PW-2 and PW-5 is nil. Further the defendants have stated that if the opportunity is not provided to them the cross-examination of said witnesses then it is difficult to prove their defence. Hence prays that to allow the applications.

7. Per contra the plaintiffs have filed objections contended that the applications filed by the defendants are

not maintainable either in law or on facts. Further contended that it is highly belated and later thought only in order to cause inconvenience and hardship to the plaintiffs just to drag on the proceedings. Further contended that the defendant No.1 unnecessarily filed the similar type of applications and it is the habit of defendants to drag the proceedings. Further the plaintiffs have contended that the affidavits contents are all false and not tenable in the eye of law. Further contended that the defendants are not attending before the court regularly and simply filed the application without any reasons and which is not tenable in the eye of law. The application filed by the defendants just to drag the proceedings and liable to be dismissed with exemplary cost.

8. In view of the application and objection and also observing the arguments advanced by the either side it appears that the defendants have similarly filed an IA No.7 and 8 for recall and reopen of the above said witnesses on 20-01-2020 and meanwhile next hearing date the PW-1, PW-2 and PW-5 are present before the court but the defendants are absent and no representation on side of defendants as such the cross of PW-1, PW-2 and PW-5 is taken as nil and case is posted for defendants evidence and meanwhile the defendants have filed the present application stated that they are ready to cross-examine the witnesses but court has taken as nil. This reasons

assigned by the plaintiffs is not tenable, however in order to avoid the abuse of process of law and in order to meet the ends of justice if the witnesses are recalled by imposing suitable cost it will just and suffice and to avoid the multiplicity of the proceedings. Therefore the arguments advanced by the learned counsel for plaintiffs is not tenable. The PW-1, PW-2 and PW-5 are always present before the court but defendants have not cross-examined them and no representation on side of defendants as such the cross of PW-1, PW-2 and PW-5 is taken as nil. Now the defendants are stated that if they are not permitted to cross-examine the said witnesses they will put untold hardship and said hardship will not be compensated by any means. Therefore in order to meet out the ends of justice if PW-1, PW-2 and PW-5 are recalled by reopening the case for tendering cross-examination imposing suitable cost no prejudice will caused to the other side. Hence, for the above reason point No.1 is answered in the Affirmative.

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

**ORDER**

The IA No.IX and X are filed by the defendants U/Sec.151 of CPC and U/o 18 Rule 17 R/w Sec.151 of CPC are hereby allowed awarding cost of Rs.250/- each.

Case is reopened for cross-examination of PW-1, PW-2 and PW-5.  
Keep present PW-1, PW-2 and PW-5.

Call on:

(Smt. Prema Vasantryao Pawar)  
Senior Civil Judge & JMFC.,  
Holalkere.