

KACM200000822016



**IN THE COURT OF SENIOR CIVIL JUDGE,**  
**AT: KADUR**

**Present:-** Sri. IRFAN.  
*B.A., LL.B.,*  
Senior Civil Judge & JMFC,  
Kadur, Chikkamagaluru District.

Dated: this the 18<sup>th</sup> June – 2025

**O.S.No.1/2016**

Plaintiff: : Sri. Govindappa.  
[By: Sri. M.B., Advocate]

V/s

Defendants: : Smt. Hanumanthamma & others.

[Defendants No.1 & 7 to 9 by: Sri. Y.T.M., Advocate]

[Defendants No.2 and 3 by: Sri. B.R., Advocate]

[Defendants No.4 to 6 – Exparte]

**RANK OF THE PARTIES ON I.A.NO.25 and 26**

Applicant/  
Defendant No.7 : Sri. Lokesh.

V/s

Opponent/  
Plaintiff : Sri. Govindappa.



i	<i>Provision under which the application is filed</i>	<i>U/O 18 Rule 17 R/w Sec.151 of CPC and U/S 151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Re-call and re-open the case for cross examination of PW-1.</i>
iii	<i>The date on which the application is filed</i>	<i>04.04.2025.</i>
iv	<i>Number of the application</i>	<i>25 &amp; 26</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>07.04.2025 by the plaintiff.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>18.06.2025.</i>

When the case is posted for defendants' argument, the 7<sup>th</sup> defendant has filed these applications.

### **ORDERS ON I.A.25 & 26**

These interim applications have been filed by the applicant / defendant No.7, U/O 18 Rule 17 R/w Sec.151 of CPC and under Section 151 of CPC seeking to re-open the stage by recalling PW-1 for cross-examination, in the interest of justice and equity.

2. These applications are supported by separate affidavits filed by the 7<sup>th</sup> defendant for himself and on behalf of defendants No.1, 8 and 9. The gist of the application averments are that due to in-diligence and inconvenience, he could not able to appear before the court and represent the case. Hence, this court has taken the cross-examination of PW-1 as nil and case is



posted for further stage. Hence, it is just and necessary to recall PW-1 for cross-examination. Accordingly, sought to allow the applications.

3. The plaintiff resisted the said applications by contending that the 7<sup>th</sup> defendant has sworn to false affidavit by suppressing the material facts. The case is posted for arguments on the defendants' side after completion of the arguments on the plaintiff's side and at this, such applications are not maintainable. The Court has given sufficient opportunity to the defendant No.7 to cross-examine the PW-1, despite of this fact, the 7<sup>th</sup> defendant himself has not come forward to cross examine the PW-1. Hence, the question of recall of PW-1 for cross-examination does not arise at all. The said application is highly belated one and same is liable to be rejected. Accordingly, sought to allow the application.

4. Heard both side. Perused the case records.

5. The following points that arise for consideration are;

*1. Whether the applicants / defendants No.1 and 7 to 9 have made out grounds to*



*reopen the case by recalling  
PW-1 for cross-examination?*

2. What order?

3. What order?

6. Answers to the above points are as under;

Point No.1 : In the Affirmative;

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

### **REASONS**

7. **Point No.1** :- The present suit is one for the relief of partition and separate possession with respect to the suit schedule properties. It is a matter of record that when the case was posted for arguments of defendants' side, these applications have been filed seeking to recall PW-1 for the purpose of cross-examination of PW-1. On reference to the order-sheet, it is noticed that on 24.11.2021, the cross-examination of PW-1 was taken as nil. It is necessary to note that the cross-examination of PW-1 is not at all commenced. Now after lapse of about four years, the defendants have come up with these applications seeking to recall PW-1 for the purpose of cross-examination. On going through the case records, it is also noticed that the parties to the suit have been negotiating for the



purpose of settlement on several occasions. In consideration of the nature of suit and in order to determine the controversy on merits, it is necessary to allow these applications by imposing exemplary costs. If these applications are not considered, same would be cause irreparable loss and injury and the defendants would deprived of their rights to substantiate their specific defence. Accordingly, **the point under consideration is answered in the affirmative.**

8. **Point No.2** :- In view of the discussion in the foregoing point, the following;

**ORDER**

I.A.No.25 and 26 filed by  
the applicants / defendants  
No.1 and 7 to 9, under Order  
18 Rule 17 R/w Sec.151 of  
CPC and under Sec.151 of  
CPC are allowed, subject to  
payment of cost of  
Rs.5,000/-.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 18<sup>th</sup> day of June, 2025)

Sd/-

(IRFAN)  
Senior Civil Judge,  
Kadur.