

[Orders pronounced in the open court, vide separate order]

ORDER

I.A.No.27 filed by the applicant / defendant No.37(b), U/O VI Rule 17 R/w Sec.151 of CPC is allowed with costs of Rs.1,000/-.

Sd/-

Senior Civil Judge,
Kadur.

ORDERS ON I.A.33 and 34

These IAs have been filed by the defendants No.1, 6 to 9, 29, 32, 35 and 39, U/O 18 Rule 17 R/w Sec.151 of CPC and U/S 151 of CPC seeking for reopening of the stage and to permit the applicants to conduct cross-examination by recalling PW-1 on the grounds that initially the suit was posted for arguments on merits. During the year 2023, the plaintiff got herself examined as PW-1 and when the matter was posted for

cross-examination, several parties to the suit were reported to be dead and the proceedings were prolonged in bringing the legal heirs of deceased parties on record. Therefore, the applicants could not proceed with the cross-examination of PW-1. It is contended that in order to establish their specific contentions, it is sought to allow the present applications.

2. The plaintiff has filed objections to these IAs contending that until and unless IA No.27 is disposed off, these applications cannot be considered. There are no merits to allow these applications and accordingly, sought to reject the same.

3. Heard learned counsel for defendants No.1, 6 to 9, 28, 29, 30 to 32, 35 and 39 and plaintiff. Perused the case records.

4. The following points that arise for consideration are;

- 1. Whether the applicant / defendants No.1, 6 to 9, 29, 32, 35 and 39 have made out grounds to reopen the case to*

recall PW-1 for cross-examination?

2. What order?

5. 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

6. **Point No.1:-** This suit for the relief of partition and separate possession, wherein on 07.11.2016 the plaintiff got herself examined as PW-1 and despite of sufficient opportunities, the applicants have not opted to go on with the cross-examination, which resulted in considering their cross-examination against PW-1 as nil on 28.04.2018. Exactly after lapse of about seven years, these applications are filed seeking to recall PW-1 for cross-examination on behalf of the applicants. It is also a matter of record that due to death of several parties to the suit, most of the time has been consumed in bringing the legal heirs on record. Keeping the said aspect in mind and also that the delay caused may be compensated in terms of

money, these applications are required to be allowed in order to adjudicate the controversy on merits. If these applications are rejected, the applicants will be deprived of their valuable rights to defend their case before this court, which is the trial court of first instances. Accordingly, **the point under consideration is answered in the affirmative.**

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

ORDER

I.A.No.33 and 34 filed by the applicant / defendants No.1, 6 to 9, 29, 32, 35 and 39, U/O 18 Rule 17 R/w Sec.151 of CPC and U/S 151 of CPC are allowed with costs of Rs.3,000/-.

Stage is re-opened.

PW-1 is recalled.

For appearance of PW-1 for cross-examination on behalf of defendants

defendants No.1, 6 to 9, 29,
32, 35 and 39, and for
amendment by: 05.11.2025.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by
me in open Court on this the 30th day of October , 2025)

SD/-

(IRFAN)
Senior Civil Judge,
Kadur.