

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC., KADUR.

O.S. NO.19/2012

DATED 10/09/2018

Plaintiff: K.B. Nageshappa

Defendant: K.B. Govindappa and others.

Order on IA No.24 and 25

Defendant No.3 has filed these two IA's U/s 151 of CPC, to reopen and recall the evidence of PW1, for the purpose of further cross examination. As contended in the accompanied affidavit filed by applicant the appellant court was remanded the case with a direction to allow the defendant No.8 to file W/s and to frame additional issue and to lead the evidence of parties on additional issue. But the plaintiff did not let evidence, hence the case was posted for arguments. It is also contended in the application that due to communication gap between himself and his counsel, the applicant was unable to pray for further cross examination of PW1. Hence it is prayed to allow the application.

No doubt it is true that as per the order passed by appellant court in R.A. No.15 and 18/2015, it was ordered to allow the defendant No.8 to file additional W/s, to frame additional issue regarding the defense of defendant No.2 to 5 that suit schedule items No.16 to 41, 48 to 52 and "B" schedule properties are self acquired properties and adduce evidence on the additional issue. In view of the order of the appellant court D8 is permitted to file additional W/s, an additional issue also framed. When the case was posted for additional evidence of plaintiff there was no representation. After lapse of numbers of adjournment the defendant No.3 has come up with the present applications.

The PW1 is already cross examined on behalf of D2 to 5 in the year 2012 itself. There is no direction by the appellant court to give permission to D3, to go with further cross examination of PW1. Hence, there is no necessity to permit the D3 to recall and reopen the evidence of PW1. Therefore, IA No.24 and 25 are dismissed.

ORDER ON IA NO.26

Plaintiff has filed this application U/o 1 Rule 10(2) of CPC to implead the proposed defendant by name Murthaiah S/o Late Shivaiah, 58 years, R/o Mavinahalli village, Kadur taluk, as additional defendant in the above case. On the said application notice was issued to proposed defendant, inspite of receipt of the notice the proposed defendant did not appeared before the court. According to the plaintiff though temporary order was granted against D2 to 4 not to alienate the suit property. They have sold the suit property on 22/05/2017 infavour of proposed defendant. Since, the proposed defendant purchased the suit property during the pendency of the suit, he is also necessary party of the case. Hence, IA No.26 is allowed. Plaintiff is permitted to implead the proposed defendant as defendant No.14.

For amendment of plaint by: 13/09/2018.

Sd/-

**Senior Civil Judge & JMFC.,
Kadur.**