

KACM200007432022



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

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

Dated : This the 10<sup>th</sup> day of June, 2026.

**O.S. No.229/2022**

**Plaintiffs** : Smt. Yashodamma & another.  
(By: Sri. K.A., Advocate)

**-V/s-**

**Defendants** : Sri. Parameshwarappa & othes..  
(Defendants No.1 to 3 by: Sri. M.S.H., Advocate)

**RANK OF THE PARTIES ON I.A.NO.14 to 16**

Applicants /  
Defendants : Sri. Parameshwarappa & others.  
-V/s-



Opponents /  
Plaintiffs : Smt. Yashodamma & another.

i	<i>Provision under which the applications are filed</i>	<i>IA No.14 – U/O 18 Rule 17 R/w Sec.151 of CPC. IA No.15 – U/ S 151 of CPC. IA No.16 – U/O 8 Rule I(a) R/w Sec.151 of CPC.</i>
ii	<i>Relief sought for</i>	<i>Reopen the stage by recalling PW-1 for cross-examination of PW-1 and also permit the defendants for production of enlisted documents by condoning the delay.</i>
iii	<i>The date on which the applications are filed</i>	<i>03.02.2026.</i>
iv	<i>Number of the applications</i>	<i>14 to 16</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>05.02.2026.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>10.06.2026.</i>

*When the case is posted for arguments of defendant, the defendants have filed these applications.*

### **ORDERS ON I.A.14 to 16**

These IAs have been filed by the defendants, U/O 18 Rule 17 R/w Sec.151 of CPC, U/S 151 of CPC and U/O 8 Rule I(a) R/w Sec.151 of CPC seeking to re-open the stage by recalling PW-1 for cross-examination and



also permit them for production of enlisted documents by condoning the delay, in the interest of justice and equity.

2. These applications are supported by separate affidavits filed by the 3<sup>rd</sup> defendant. The gist of the applications averments are that when the said case is called out on 02.02.2026 for cross-examination, the counsel for defendants arguing the case before Prl. Civil judge and JMFC Court, Kadur and this court had ordered that the cross-examination of PW-1 is taken as nil. The non cross-examination of PW-1 is bonafide and unintentional. On the hearing of the cross-examination of PW-1, he was out of country and he could not instruct his counsel to cross-examine the PW-1. The 3<sup>rd</sup> defendant under IA No.16 contended that the plaintiff has filed the said suit against defendants for partition. One Smt. Sarojamma D/o late Nagappa has filed the suit for partition against the defendants and others for the properties described in this suit. The certified copies of the proceedings in OS No.250/2023 on the file of this court are very much necessary for the just decision of the suit. The delay in production of those



documents is bonafide and unintentional. Accordingly, sought to allow these applications.

3. The plaintiffs resisted the IA No.14 to 16 by contending that the defendants have sworn to false affidavit by suppressing the material facts. At the arguments stage, the applications filed by the defendants are not maintainable and same are liable to be dismissed. On 30.10.2023, this court taken that the cross-examination of PW-1 is nil, then the defendants have filed the similar applications to recall PW-1 for cross-examination of PW-1 and same was allowed by this court on 17.01.2024, but on that day, the defendants have not come forward to cross-examine the PW-1, hence, the court again taken that the cross-examination of PW-1 is nil on 05.08.2024, again the defendants filed the similar applications to recall PW-1 for cross-examination and this court allowed the said application on 16.12.2025 and on that day also the defendants have not come forward to cross-examine the PW-1. Hence, the court taken that cross-examination of PW-1 is nil and posted the case for arguments. This court has given sufficient opportunities to the



defendants to cross-examine PW-1 as stated above, but the defendants have not come forward to do so. Now, the defendants have again filed similar applications by swearing to the false affidavit in order to delay and to drag on the proceedings and to have wrongful gain and hence, the applications itself are not maintainable. The documents sought to be produced by the defendants is noway concerned to the present case and said documents will not help to the court to decide the case and to prove the case of defendants and said documents are not a relevant documents to mark the same. Hence, question to permit the defendants for production of documents by condoning the delay does not arise at all. The defendants have filed these applications only to delay and to dragon the proceedings. Accordingly, sought to dismiss the applications.

4. Heard both side. Perused the case records.

5. The following points that arise for consideration are;

*1. Whether the applicants made out grounds to reopen the*



*stage by recalling PW-1 for cross-examination ?*

*2. Whether the applicants made out grounds for condoning the delay in production of documents?*

*3. What order?*

6. Answers to the above points are as under;

Point No.1 : In the Affirmative;

Point No.2 : In the Affirmative;

Point No.3 : As per final order  
for the following;

### **REASONS**

7. **Points No.1** :- Both points are taken together for common discussion to avoid repetition of facts.

The present suit is one for the relief of partition and separate possession, wherein, the plaintiffs have claimed their 1/5th share in the suit schedule properties. On reference to the order-sheet, it is noticed that similar applications seeking for reopening the stage and recalling PW-1 for conducting cross-



examination have been filed on three different occasions on similar grounds and at all occasions the said applications have been generously allowed by imposing reasonable costs. But however even in spite of plaintiff providing err number of opportunities to the defendants they have not proceeded to conduct cross-examination of PW-1 and therefore, finally on 02.02.2026, the cross-examination of PW-1 has been taken as nil for the forth time. Again thereafter, the defendants have come up with these applications again seeking for recalling of PW-1 on the grounds that the learned counsel for the defendants on the stipulated date was engaged in another court and also on the grounds that the 3<sup>rd</sup> defendant was abroad at the relevant point of time. The plaintiffs have resisted the applications on the grounds that the conduct of the defendants is deliberate and they are intentionally dragging the proceedings to the maximum extent possible. It is necessary to note that the cross-examination of PW-1 is not commenced yet. Laws always favour the adjudication of the dispute on merits and for that end it is found reasonable to allow these applications by imposing exemplary costs upon the



defendants. This is trial court and the parties should be permitted to put-forth their evidence and if at this stage the opportunity is denied the defendants would certainly not be in a position to put-forth their defence at all. It has to be understood that the deliberate actions of the defendants should not prejudiced the plaintiffs right to fair adjudication, but when the delay can be compensated in terms of money, it is proper to allow these applications seeking recall of PW-1 for cross-examination by reopening the stage to meet the ends of justice. IA No.16 has been filed seeking leave of the court produce the enlisted documents and in consideration reasons therein it is found essential to allow the same by condoning the delay in belated production. Accordingly, **the points No.1 and 2 under consideration are answered in the Affirmative.**

8. **Point No.3** :- In view of the discussion in the foregoing point, the following;

**ORDER**

I.A.No.14 and 15 filed by  
the 3<sup>rd</sup> defendant, U/O 18  
Rule 17 R/w Sec.151 of CPC



and U/S 151 of CPC are allowed on exemplary costs of a sum of Rs.5,000/-.

The defendants shall have right to cross-examine PW-1 only after payment of the costs to the plaintiff.

I.A.No.16 filed by the 3<sup>rd</sup> defendant, U/O 8 Rule I(a) R/w Sec.151 of CPC is allowed.

The delay in production of application schedule document is condoned.

Stage is reopened and PW-1 is recalled for cross-examination by the defendants.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 12<sup>th</sup> day of March, 2026)

(IRFAN)  
Senior Civil Judge,  
Kadur.