

COMMON ORDER ON I.A.NO.IV
AND V

The counsel for plaintiff has filed I.A.No.IV 151 of C.P.C. seeking permission to reopen the stage and also I.A No- V U/o 18 R-17 R/w 151 of CPC to recall PW-1 for the purpose of cross examination of PW.1.

2. In the accompanying Memorandum of facts of both applications the plaintiff submitted that, the case was posted for cross of PW.1 during that time the plaintiff due his old age and ill-health could not appear before this court. Hence, this court has considered as the PW.1 has not tendered for cross examination and taken as nil. The PW.1 is bedridden and reason is not intentional one. Hence, it is just and necessary to re-call PW.1 and permit him to face the test of cross

examination and prayed to allow the applications.

3. The counsel for defendant has not filed any objection to I.A.No.IV and V. Hence, this court has taken the objections as not filed.

4. Heard on the application. Perused the materials available on record the present case is now posted for defense evidence. The counsel for plaintiff filed 4 IA to reopen the stage and recall PW.1 and to appoint court commissioner to record his cross examination at the place where the plaintiff is residing. Hence, this court is of the opinion that, at this stage it is necessary to give an opportunity to the plaintiff to face the test of cross examination to prove his case. Cross of PW.1 is necessary for this court to adjudicate the matter and to avoid multiplicity of proceedings and also in the interest of justice it

is just and necessary to allow this applications.

5. Hence, I proceed to pass the following;

ORDER

The I.A.No.IV Under Sec.151 of C.P.C. and I.A No-V filed by the plaintiff Under Order 18 Rule 17 of C.P.C. is hereby allowed on cost of Rs.200/-.

The Stage is re-open and PW.1 is recalled.

For cross of PW.1 finally.

1st ACJ & JMFC, KADUR.

ORDER ON I.A.No.VI

The learned Counsel for the Plaintiff has filed I.A.No. VI U/O 26 Rule 4A R/w Section 151 of CPC and prays this Court to appoint court commissioner to

record evidence of H. Basheer.

In the memorandum of facts it is mentioned that the said witness is aged about 85 years and not in position to come before the court to lead evidence. Learned counsel for plaintiff has suggested the name of advocate Sri. H.N Sunil, advocate of Kadur Bar Association for appointing him as Court Commissioner.

The defendants have not filed any objections to the I.A. No-6. For the disposal and for the proper adjudication of the matter and in the interest of justice recording of the cross examination of PW-1 is necessary. It is obvious that, due to old age the body of a person does not support to walk. As per the suggestion of plaintiffs counsel, Sri. H.N Sunil advocate, Kadur Bar Association is appointed as a Court Commissioner in the present case

to record cross examination of H.Basheer. Plaintiff and defendants are directed to file memo of instructions. Tentatively the Court Commissioners fee is fixed at Rs.1,000/- and the same should be paid in the account of this Court. Office is to handover the deposition of PW-1 and exhibited documents to the court commissioner after proper acknowledgement. Issue commission warrant to the above Court Commissioner on payment of the commissioner's fee and on furnishing the memo of instructions.

For report call on
25.03.2024.

Sd/-
I ADDL. C.J. & JMFC, KADUR.