

KACM710013282015



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 7th Day of February 2023

ORIGINAL SUIT NO.234/2015

PLAINTIFF/s :

R.Govindappa S/o Rangappa, aged 67 years, Agriculturist, R/o Bettadahalli Village, Kasaba Hobli, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri GVK/SVA, Advocate.)

Vs.

DEFENDANT/s:

Sunandamma W/o Malleshappa, D/o Bheemappa, aged 47 years, Household work, R/o Behind Maggadmane, K.E.B. Road, Police Ningappa Layout, Tarikere Town and Post, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri T.N.M., Advocate.)

PARTIES TO I.A.NO.XII & XIII

Applicant/s : R.Govindappa

Vs.

Opponent/s : Sunandamma

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**COMMON ORDER ON I.A.NO.XII & XIII**

When the matter is set down for arguments on merits, the present I.As., are filed.

2. The plaintiff has filed I.A.No.XII u/s 151 of CPC with a prayer to reopen the above matter for further cross examination of DW.1 from arguments and he has filed I.A.No.XIII u/s 151 of CPC with a prayer to recall DW.1 for further cross examination.

3. The I.As., are supported with the affidavits of the plaintiff. The plaintiff in the affidavits he has stated that the defendant namely Sunandamma is examined as DW.1, after chief examination the counsel for the plaintiff cross examined DW.1, but some important questions are left out in order to prove the case of the plaintiff. Therefore, it is just and necessary to reopen the above case for further cross examination of DW.1 and to recall DW.1 for further cross examination. If these I.As., are not allowed, the plaintiff will be put to hardship and injury, on the other hand if these applications are allowed no hardship will be caused to the other side. Hence, these applications.

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4. The I.As., copies served to the other side. The counsel for the defendant has filed separate statement of objections and resisted the I.As., filed by the plaintiff and interalia contended that the above matter set down for arguments on merits. The counsel for the plaintiff has fully cross examined DW.1, the plaintiff has not assigned the valid grounds to allow the I.As., in their applications. The DW.1 is the senior citizen, the plaintiff has filed this I.As., at this belated stage only with an intention to protract the proceedings. For all these grounds, he prays for to reject the I.As., filed by the plaintiff with exemplary cost.

5. Heard arguments on both sides.

6. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.XII and XIII filed by the plaintiff are deserves to be allowed?
- 2) What order?

7. My findings on the above points are as follows :

Point No.1 : In the Affirmative,

Point No.2 : As per the Order,

for the following:

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REASONS

8. **POINT NO.1** : On perusal of the materials available on record, admittedly the plaintiff has filed above suit against the defendant for the relief of declaration, injunction and consequential relief of recovery of possession in respect of suit schedule property. When the matter is set down for arguments on merits, the plaintiff has filed these I.As., and sought for to reopen the case for further chief examination of DW.1 and to recall the DW.1 for further cross examination. It is the urge of the plaintiff that, his counsel has already cross examined DW.1, at the time of cross examination the counsel for the plaintiff has left out the important questions and those questions are very much necessary to prove the case of the plaintiff. On the other hand, the defendant has contended that when the matter is set down for arguments on merits, the plaintiff has moved these applications at a belated stage without assigning the valid reasons in the I.As. Moreover the defendant further contended that the plaintiff has filed these I.As., only to protract the proceedings.

9. On perusal of materials available on record, admittedly it is a suit for declaration, injunction and recovery of possession against the defendant in respect of suit

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schedule property. In a suit for declaration and injunction, the burden of proof is always lies upon the plaintiff to establish his title and possession over the suit schedule property. Therefore, if one more opportunity would be given to the plaintiff's counsel to cross examine DW.1 by imposing cost, it will meet the ends of justice. If these applications are allowed, no hardship will be caused to the other side. For considering all these reasons, I answer Point No.1 in the Affirmative.

10. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.XII and XIII filed by the plaintiff are hereby allowed on cost of Rs.300/- each.

The case is reopened for further cross examination of DW.1.

For further cross examination of DW.1
by : 09.02.2023.

(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open Court, on this the 7th day of February 2023)

sd/-
(SHIVAKUMAR.R)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.