

KADG310002062018



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC, HARIHAR**

PRESENT: Smt. Padmashri A. Munnoli,
B.A.L, LL.B.
SENIOR CIVIL JUDGE AND JMFC,
HARIHAR

DATED THIS THE 25th DAY OF MARCH, 2025

O.S. No. 26/2018

Plaintiff / s : Sri. Allamprahuswamy,
S/o Basvarajaiah H., Aged about 39
Years, R/o Kariganur village, Channagiri
Taluk, Davangere District.

(Plaintiffs by Sri. H. Murigendrappa, Advocate)

:: VERSUS ::

Defendant / s : 1. Sri. Dadapeer, S/o Imamuddin Sab,
Aged about 55 Years
2. Smt. Shaheenbanu, W/o Dadapeer,
Aged about 48 Years.
3. Sri. Nijamuddien, S/o Dadapeer,
Aged about 26 Years.
4. Smt. Jakiyabanu, D/o Dadapeer,
Aged about 24 Years.

5. Smt. Sabhiabanu, D/o Dadapeer,
Aged about 22 Years.
6. Smt. Salmabanu, D/o Dadapeer,
Aged about 20 Years.
7. Smt. Afsan, D/o Dadapeer, Aged
about 20 years.
8. Sri. Gouspeer, S/o Dadapeer, Aged
about 18 years.
9. Smt. Reshma, D/o Dadapeer, Aged
about 16 Years.

The defendants No. 8 and 9 are minors, represented by their father Mr. Dadapeer I.,e defendant No.1 as a guardian of minor children.

10. Smt. Ashwathamma, W/o Late Thipperudrappa, Aged about 50 Years.

All are residing at Avaragolla village, Davangere Taluk and District.

(D.No. 1 to 9 Exparte)
(D.10 – C.B. Raghavendra Adv)

Parties in IA No. 8 and 9

Applicant / : Smt. Ashwathamma
Defendant
No.10

:: VERSUS ::

Opponents / : Sri. Allamprabhuswamy
Plaintiff

**ORDER ON I.A. NO. 8 and 9 filed by defendant No.10 U/Sec.
151 of CPC and U/O 18 Rule 17 R/w Sec. 151 of CPC**

The present applications are filed by the defendant No.10 with a prayer to reopen the suit from the stage of arguments and permit defendant No.10 to cross-examine PW.1 and 2.

2. In the affidavits sworn to in support of the applications, defendant No.10 states that the counsel for her could not be present on the previous date of hearing and the matter is posted for arguments, therefore, it is necessary to reopen the side of plaintiff evidence and permit her to cross-examine PW.1 and 2. Hence, it is prayed that the applications be allowed.

3. Learned counsel for the plaintiff has filed his statement of objections to IA No.8 and 9.

4. It is contended that defendant No.10 had already filed similar applications in IA No.6 and 7 and even though they were allowed, defendant No.10 did not choose to cross-examine PW.1 and 2. That the plaintiff has lead his evidence in the month of March 2021 and the further evidence was lead in the month of

October 2023. IA No. 6 and 7 were allowed by imposing cost but, defendant No.10 has not chosen to cross-examine PW.1 and 2 even the evidence of defendants side is taken as closed and therefore, now the application is not maintainable. Hence, it was prayed that the same be dismissed.

5. Heard, perused the material on record.

6. The points that arise for consideration of this court are as follows:

1. Whether defendant No.10 can be permitted to cross-examine PW.1 and 2 as prayed in IA No.8 and 9?
2. To what order?

7. The findings of this court on the above points are as follows:

Point No.1 In the Affirmative;

Point No.2 As per final order
for the following:

: R E A S O N S :

8. Point No.1 :- Learned counsel for defendant No.10 would argue that as the suit is one for specific performance of

contract, it is necessary to cross-examine PW.1 and 2 and defendant No.10 due to inconvenience could not cross-examine PW.1 and 2. Hence, it is prayed that the application be allowed.

9. Learned counsel for the plaintiff would argue that sufficient opportunity was given to defendant No.10 to cross-examine PW.1 and 2 and the suit is of the year 2018. Hence, it was prayed that the applications be dismissed.

10. Perusal of the material on record discloses that suit of the plaintiff against defendant No.1 to 10 is for specific performance of contract based on the agreement of sale dated: 01.04.2015. Defendant No.1 to 9 are stated to have executed the agreement of sale by receiving advance consideration amount of Rs.5,00,000/- and that Rs.1,00,000/- is the balance sale consideration amount. That the khata of the suit property is standing in the name of defendant No.10. That defendants No.1 in order to secure the loan borrowed from defendant No.10, is stated to have executed a registered sale deed on 13.01.2003 in favor of defendant No.10. That there was a condition that the property should be get reconveyed from defendant No.10. Therefore, defendant No.10 is shown to be the necessary party to the suit.

11. Defendant No.10 in the written statement has contended that defendant No.1 has executed the sale deed in her

favor on 13.01.2003 and also handed over the possession of the suit property to her and she is the absolute owner.

12. The order sheet discloses that sufficient opportunity was given to defendant No.10 to cross-examine PW.1 and 2, but, she has failed to cross-examine them. But, however, considering the nature of the suit and also defense taken by defendant No.10, in my opinion by imposing reasonable cost, IA No.8 and 9 can be allowed for complete adjudication of the matter in dispute. Accordingly, for these reasons I answer **point No.1 in the Affirmative.**

13. Point No.2:-For the reasons stated above, I proceed to pass the following.....

:ORDER:

IA No. 8 and 9 filed by the defendant No. 10, U/Sec. 151 of CPC and U/O 18 Rule 17 R/w 151 of CPC are hereby allowed on cost of Rs.3,000/- payable to plaintiff.

Defendant No.10 is permitted to cross-examine PW.1 and 2 subject to payment of this cost and previous cost.

(Dictated to the Stenographer directly on computer, typed by him corrected by me and then pronounced in the open court on this the 25th day of March, 2025)

(Smt. Padmashri A. Munnoli)
Senior Civil Judge & JMFC,
Harihar