

**IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE**  
**AND J.M.F.C., DHARWAD.**

**Present:** SRI.ANAND S KARIYAMMANAVAR  
B.A., LL.B(Hon's)  
IV Addl. Senior Civil Judge  
& J.M.F.C., Dharwad.

**OS No.111/2022**

**Dated : 10<sup>th</sup> day of September 2024**

**Plaintiff/s** : Laxmi V.Shettar and another.

**V/s.**

**Defendant/s:** Smt.Shaila W/o late Nagappa Mithare and others.

**PARTIES TO IA NO.XVI**

**Applicant/s**: Laxmi V.Shettar and another.  
(Ori Plfs)

**V/s.**

**Opponent/s:** Smt.Shaila W/o late Nagappa Mithare and others.  
(Org Defs)

**ORDER ON I.A.NO.XVI**

The counsel for plaintiffs filed this application under Section 151 of CPC thereby sought to set aside the order dated 13.06.2025 passed by this Court and permit the plaintiffs to lead evidence.

2. The plaintiff No.2 filed her affidavit in support of this application and submitted that, when case was posted for evidence of plaintiff No.2, she was suffering from ill health of high fever, therefore she could not appear before the court to lead evidence. Further plaintiff No.2 also submitted that, plaintiff No.1 is her daughter and she is working as teacher in Jnanajyoti School, Dharwad and due to the rush of academic work she was unable to get leave, therefore on the aforesaid day she could not appear before the Court. Therefore, failure to attend before the Court to lead evidence is neither intentional or deliberate one, thereby sought to set aside the order dated 13.06.2025 and permit to tender for chief examination.

3. Per contra, defendants filed objections to this applications and contended that, this Court has given sufficient opportunities in spite of that, plaintiffs not appeared before this Court and only in order to prolong the matter the present application is filed, thereby sought to reject the application.

4. I have heard the arguments of counsel for plaintiffs on IA No.XVI and perused the material available on record.

5. Now the following points arise for my consideration.

|    |                                                                                 |
|----|---------------------------------------------------------------------------------|
| 1. | <b>Whether the application filed by the plaintiffs deserves to be allowed ?</b> |
| 2. | <b>What order ?</b>                                                             |

6. My answers to the above points are as under:-

|                    |                                                   |
|--------------------|---------------------------------------------------|
| <b>Point No.1:</b> | <b>In Affirmative.</b>                            |
| <b>Point No.2:</b> | <b>As per the final order, for the following:</b> |

### **REASONS**

7. **Point No.1:-** This is a suit instituted by the plaintiffs against the defendants for the relief of partition and separate possession of her 1/5th share in the suit properties and also for declaration to declare the death of Mallikarjun Basappa Mithare as civil death. When the matter was posted for chief examination of plaintiffs, they did not appear before the Court to lead evidence. On perusal of the order sheet dated 13.06.2025, after framing of Issues this court has provided sufficient opportunities to the plaintiffs to lead evidence on 09.02.2024, 05.03.2024, 25.04.2024, 10.07.2024, 01.08.2024, 29.08.2024, 13.09.2024, 21.02.2025, 28.03.2025 and 17.04.2025, however plaintiffs have not come

forward to lead evidence, hence plaintiff evidence is taken as nil on 13.06.2025 and matter was posted for defence evidence. However, in order to adjudicate the matter and decide the rights of the parties, evidence of plaintiffs is very much necessary, therefore if the application is allowed no hardship will be cause to other side. Hence for the above stated reasons, I have answered **point No.1 “in Affirmative”**.

8. **Point No.2:-** For the reasons stated while discussing **point No.1**, I proceed to pass the following:-

### **ORDER**

***The I.A.No.XVI filed by the plaintiffs under Section 151 of CPC is hereby allowed with cost of Rs.500/-.***

***The Order dated 13.06.2025 is hereby set aside. Plaintiffs are directed to lead their evidence without taking further adjournment.***

(Dictated to stenographer, typed by her, corrected and then pronounced by me in the open court on **10<sup>th</sup> day of September 2024**)

**(Anand S Kariyammanavar)**  
IV Addl. Senior Civil Judge,  
& J.M.F.C., DHARWAD.

For order  
10-09-2025

(Order pronounced in the open Court vide separate order)

**ORDER**

***The I.A.No.XVI filed by the plaintiffs under Section 151 of CPC is hereby allowed with cost of Rs.500/-.***

***The Order dated 13.06.2025 is hereby set aside. Plaintiffs are directed to lead their evidence without taking further adjournment.***

**(Anand S Kariyammanavar)**  
IV Addl. Senior Civil Judge,  
& J.M.F.C., DHARWAD.