

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.226/2005

Dated this the 24th day of February, 2026

Plaintiff : Husainsab S/o Rajesab
Kotagunashi and others.

.Vs.

Defendant : Sri. Ananth S/o Bhimrao Desai
and others.

PARTIES TO I.A. No.18 TO 20

Applicant/s : Smt. Sajeeda W/o Abdul Gani
(Def. No.12) Nadaf.

.Vs.

Opponent/s : Husainsab S/o Rajesab
(Plaintiffs) Kotagunashi and others.

- i. Provision under which : I.A. No.18 & 20 – under
application is filed Sec.151 of CPC
I.A. No.19 – under Order
XVIII Rule 17 R/w Sec.151 of
CPC.

- ii. Relief sought for : I.A. No.18 & 19 – Seeking to re-open and recall the P.W.2 for the purpose of cross examination on behalf of defendant No.12.
I.A. No.20 – seeking permission the cross examination of P.W.1 on behalf of defendant No.12, in the interest and justice and equity.
- iii. The date on which : 17.02.2026
application is filed
- iv. Number of the : 18 to 20
application
- v. The date on which : 18.02.2026 (by plaintiff)
objections are filed by
different opponents
- vi. The date on which : 24.02.2026
orders were passed on
the said application

COMMON ORDERS ON I.A No.18 TO 20

The counsel for the defendant No.12 has filed I.A. No.18 and 19 under Sec.151 of CPC and under Order XVIII Rule 17 R/w Sec.151 of CPC, seeking to re-open and recall the P.W.2 for the purpose of cross examination on behalf of defendant No.12 and further, I.A. No.20 under Sec.151 of CPC, seeking permission the cross examination of P.W.1 on behalf of defendant No.12, in the interest and justice and equity.

2. The plaintiffs have filed objections to I.A. No.18 to 20.

3. *Heard arguments.*

4. *The points for consideration are:*

1. *Whether the reliefs sought by the defendant No.12 in the applications, can be granted ?*
2. *What order ?*

5. *The above point No.1 is answered in the negative and point No.2 as per final order, for the following:*

REASONS

6. **Point No.1:** *In the annexed memo of facts the counsel for the defendant No.12 averred that, the above suit has been remanded by the Hon'ble Appellate Court for reconsideration of the matter on hand. That the evidence of plaintiff is lead by P.W.1 and 2 before remanding of the matter. Subsequently, defendant No.12 has been impleaded sue moto by filing the required application before the Court. The application came to be allowed and defendant No.12 is impleaded as party to the case. That P.W.1 and 2 have lead the evidence before remanding of the above noted case. Hence, now defendant No.12 intends to cross examined P.W.2 on his behalf. Hence, this application and prayed to allow the application.*

7. *The objections of the plaintiffs is that the entire contents of application paras are false, frivolous,*

concocted and vexatious. The plaintiffs filed suit for the relief of declaration against defendants in respect of suit schedule property and the plaintiffs are having right, title and interest over the suit schedule property. That after hearing the matter the Court was decreed the suit of the plaintiffs and granted adverse possession and the defendants had prepared an appeal before Hon'ble High Court of Karnataka, Dharwad Bench and after hearing the matter the Hon'ble High Court has remanded the suit for fresh consideration. That the plaintiff No.3 had deposed as P.W.1 and fully cross examined said witness. Hence, the case is posted for defendants evidence. It is further contended that the defendant No.12 is filed application for recall P.W.2 for cross examination and after verification of records it is found that the P.W.2 is independent witness and he was deposed prior to remand above said suit. Moreover, the said witness is no more since the said witness died more than 8 years back. Hence, the application filed by the defendant No.12 is not survive for consideration. The defendant No.12 without any verification of records filed application for the relief of recall of P.W.2 who is dead. If the present application filed by defendant No.12 are allowed they will be put to injustice, in other hand if the applications are dismissed there is no loss and damage will cause to defendant. Hence, the application filed by

the defendant No.12 is liable to dismissed with imposing cost.

8. *On perusal of the entire material available on record it is noticed to the Court that an application to recall a witness usually under Order 18 Rule 17 of CPC or inherent powers presupposes that the witness is alive and capable of being produced, once the witness has died recall becomes factually impossible and the application becomes infructuous.*

9. *So far as, P.W.2 was examined earlier the matter was later remanded, and before fresh trial proceedings the defendant apply to recall P.W.2 for cross examination, but the P.W.2 had already dead. An application to recall a witness who is no longer alive is not maintainable. But, regarding evidentiary value of the P.W.2 is concerned, evidence in chief alone without opportunity for cross examination generally carries no evidentiary value. Cross examination is a substantive right of the opposite party. Moreover, evidence not tested by cross examination is weak and ordinarily cannot be relied upon.*

10. *In this case, a remand order usually directs fresh disposal after giving opportunity to parties. Therefore, if the remand specifically ordered fresh trial / fresh evidence, earlier deposition loses operative force. If remand was only on a limited issue and did not set*

*aside earlier evidence, then prior evidence may still be read subject to law of evidence. But, in the present suit on hand remand order directs fresh disposal of the suit. Therefore, earlier evidence of the plaintiff i.e., P.W.2 is no value in the eye of law. Therefore, this Court is of the opinion that application is not maintainable and it becomes infructuous and liable to be dismissed. Hence, I answer the **point No.1 in the negative.***

11. **Point No.2:** *In view of findings on point No.1, this court proceeds to pass the following:*

ORDER

The I.A. No.18 to 20 filed by the defendant No.12 under Sec.151 of CPC and under Order 18 Rule 17 R/w Sec.151 of C.P.C. are hereby rejected.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **24th day of February, 2026**)*

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*