

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.66/2019

Dated this the 28th day of January, 2026

Plaintiff : Smt. Annapoorna W/o Virupakshappa
Uppin
Since deceased by her Lrs.

.Vs.

Defendant : Basavaraj @ Vasant S/o
Chandrashekhara Kajgar and others.

PARTIES TO I.A. No.XVII

Applicant/s : Noorandappa S/o Virupakshappa Uppin.

.Vs.

Opponent/s : Basavaraj @ Vasant S/o
Chandrashekhara Kajgar and others.

- i. *Provision under which application is filed* : Under Order XVIII Rule 17 R/w Sec.151 of CPC.
- ii. *Relief sought for* : Seeking to recall P.W.1 to get marked the signatures.
- iii. *The date on which application is filed* : 26.06.2025

- iv. Number of the : XVII
application
- v. The date on which : 07.07.2025
objections are filed by
different opponents
- vi. The date on which : 28.01.2026
orders were passed on
the said application

ORDERS ON I.A. No.XVII

The Counsel for plaintiffs have filed an application under Order 18 Rule 17 R/w. Sec.151 of C.P.C., seeking to recall P.W.1 to get marked the signatures.

2. The defendant No.1(a) to (d) and 4 have filed objections to this I.A.

3. Heard arguments.

4. The following point is arises for disposal off the said applications.

“Whether the reliefs sought by the plaintiffs in the application, can be granted ?”

5. My finding to the above point in the Affirmative, for forgoing;

REASONS

6. This is the suit filed by the plaintiffs for the relief of declaration against the defendants in respect of the sale deeds of suit properties. The plaintiff No.1(b) filed his affidavit in support of the present application and contended that the above matter is posted for his cross examination. He stated

that he had filed application for called for documents from the Bank Authorities and accordingly they have produced the same and it is specific case of his mother original plaintiff that by personating and by forging his signature has created the sale deed in question. Therefore, to substantiate the same marking of the signatures appearing on the bank documents and also other document is very much necessary and essential. It is further submitted that due to oversight he could not get mark the signatures of his mother in the above said documents in his earlier examination in chief and not doing so was neither intentional nor deliberate but the same was due to bonafide cause and reason as stated. It he is not recalled and thereby not permitted him to get mark the said signatures of his mother he will be put too much loss and injustice which cannot be compensated in terms of money. Hence, prayed to allow the I.A.

7. The objections of the defendant No.1(a) to (d) and 4 is that, the applications are illegal, improper and the same is not tenable either in law or on facts of the case. The matter is of the year 2003 and after transferred to this Court suit is numbered in the year 2019. The plaintiffs are bent upon the innocent defendants from last 21 years, they are not in a mood to conclude, they are filling such applications after applications just to protract the proceedings. The documents sought to be called for from the Bank and further the contents of the affidavit as to it was case of mother of the plaintiff that by personating and forging signature of the plaintiff, sale deed is created in question etc, is not understood as to who has

personated and forged signature. No where it has been discloses that who has forged and personated signature of the plaintiff No.1(b) and executed sale deed in whose favour etc. Statement of plaintiff was closed long back and plaintiff have began the evidence, at that time they were knowing all these facts even then have not filed such application. Plaintiffs having learnt that they have no case on merit and also going to lose their case are filing such applications after applications. If the applications is considered on any angle, it amounts to anti clockwise proceedings and much injustice to the petitioner. Hence, prayed to dismiss the I.A.

8. On perusal of the entire materials available on record it is noticed to the Court that present matter has been set down for cross of P.W.1 by that time the plaintiff filed the present application seeking above said relief. Admittedly, matter is in the stage of cross of P.W.1 since 13.10.2023 in between the plaintiff filed number of applications and till today the cross of P.W.1 has not been completed. Anyhow the plaintiff seeking the relief of recall of P.W.1 for the purpose of marking of signatures.

9. Moreover, the Hon'ble Apex Court held in so many decisions that recall / reopen can be allowed in exceptional cases under Sec.151 of CPC even if not specifically provided in the code.

10. Moreover, it must be supported by strong, fresh, and valid reasons not considered earlier and if interest of justice demands and no prejudice is caused to the opposite party in

such circumstances the Court may consider the said application.

11. Admittedly, the present suit has been filed for the relief of declaration in respect of the suit schedule property and it is pending for adjudication. Further, that the evidence now proposed to be led is vital for proper and fair adjudication of the case and goes to the root of the matter. In such circumstances, denial of such opportunity would cause irreparable injury to the plaintiffs and may result in miscarriage of justice.

12. Moreover, no prejudice will be caused to the defendant if the present application is allowed except delay. That the present application is filed bonafide and in the interest of justice under the inherent powers of this Court under Sec.151 of CPC. Hence, this Court is of the opinion that the objection raised by the counsel for defendant No.3(a) to 3(d) and 4 is not sustainable under law. If an opportunity is granted to recall the P.W.1 for further chief of P.W.1 if such action is warranted to meet the ends of justice. Moreover, delay may be compensated by way of imposing suitable cost to otherside. Therefore, this Court is of the opinion that the application filed by the plaintiff is deserves to be allowed on payment of cost and I answer the point No.1 in affirmative. Hence, I proceed to pass the following:

ORDER

I.A. No.XVII filed by the plaintiffs under
Order XVIII Rule 17 of CPC is hereby allowed

on payment of cost of Rs.500/-.

Resultantly, P.W.1 is recalled for the purpose of further chief examination subject to payment of cost.

Further, hereby directed to complete the evidence as early as possible as matter is old one without taking adjournment.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **28th day of January, 2026**)*

sd/-

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