

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.167/2015

Dated this the 26th day of September, 2025

*Plaintiff : Smt. Anasuya W/o Kallappa Katti and
others.*

.Vs.

*Defendant : Smt. Basava W/o Shivappa
Huttakkanavar and others.*

PARTIES TO I.A. No.24 AND 25

Applicant/s : *Smt. Anasuya W/o Kallappa Katti and
others.*

.Vs.

Opponent/s : *Smt. Basava W/o Shivappa
Huttakkanavar and others.*

- i. *Provision under which application is filed* : I.A. No.24 - under Sec.151 of CPC.
I.A. No.25 - under Order XVIII Rule 17
R/w Sec.151 of CPC.

- ii. Relief sought for : I.A. No.24 - seeking to reopen the case for plaintiff's evidence for marking the documents
I.A. No.25 - seeking to recall the P.W.1 for the purpose of marking the documents.
- iii. The date on which : 07.07.2025
application is filed
- iv. Number of the : 24 & 25
application
- v. The date on which : 15.07.2025
objections are filed by
different opponents
- vi. The date on which : 26.09.2025
orders were passed on
the said application

COMMON ORDERS ON I.A. No.24 AND 25

The counsel for plaintiff has filed an application under Sec.151 of C.P.C., seeking to reopen the case for plaintiff's evidence for marking the documents and another application under Order 18 Rule 17 R/w. Sec.151 of C.P.C. seeking to recall the P.W.1 for the purpose of marking the documents.

2. The defendants have filed common objections to the I.A. No.24 and 25.

3. Heard arguments.

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

“Whether the reliefs sought by the plaintiff in the applications, 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 partition and separate possession against the defendants in respect of the suit properties.*

7. *When the matter is set down for arguments on merits by that time the counsel for plaintiff filed the present applications for reopen and recall of P.W.1 for the purpose of marking the documents.*

8. *The applicant filed her affidavit in support of the present applications and contended that the suit is posted for arguments on merits. During the course of evidence, plaintiff placed some relevant documents as well as positive photos along with CD. These documents important for complete appreciation of the suit. These documents were not marked by mistake inadvertence. The documents are already on record. While preparing for arguments counsel for the plaintiffs noticed that above documents were not marked in her favour in her evidence. Non-marking the documents is irreparable loss to plaintiff. No hardship whatsoever would be caused to defendants if this applications are allowed. Hence, prayed to allow the applications.*

9. *The objections of the defendants is that if the applications are allowed the defendant would be put to mush*

loss and injustice which cannot be compensate in terms of money. On the contrary no loss or prejudice would be caused to the plaintiffs if its rejected. Hence, prayed to dismiss the applications.

10. On perusal of the entire materials available on record it is noticed to the Court that present matter has been set down for arguments on merits after completion of trial of the both parties by that time they filed the present applications seeking above said relief. Since 2019 itself the evidence of the plaintiff has been completed with fully cross examined, thereafter number of applications have been filed for recall of P.W.1 for some other purpose, till today they have not trying to mark the said available document those which are relied by the plaintiff.

11. 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.

12. 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.

13. Admittedly, the present suit has been filed for the relief of partition and separate possession in respect of the suit schedule properties 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.

14. Moreover, no prejudice will be caused to the defendants if the present applications are allowed. That the present applications are 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.1, 4, 5 and 8 is not sustainable under law. If an opportunity is granted to recall and reopen the case for leading the further chief of PW-1 if such action is warranted to meet the ends of justice. Therefore, this Court is of the opinion that the delay in filing the applications is not criteria to dismiss the prayer, on the other hand delay may be condoned by imposing suitable cost to other side. Hence, this Court is of the opinion that the applications filed by the plaintiffs are deserves to be allowed on payment of suitable costs and I answer the point No.1 in affirmative. Hence, I proceed to pass the following:

ORDER

I.A. No.24 and 25 filed by the plaintiffs under Sec.151 of CPC and under Order XVIII Rule 17 R/w Sec.151 of CPC are hereby allowed on payment of cost of Rs.1,000/-.

Resultantly, case is reopened and P.W.1 is recalled for the purpose of marking of document, subject to payment of cost to the defendant No.1, 4, 5 and 8 on next date of hearing without fail.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **26th day of September, 2025**)*

sd/-

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