

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 21st day of January, 2026

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

.Vs.

*Defendant : Smt. Basappa W/o Shivappa
Huttakkanavar
Since deceased by her Lrs.
and others.*

PARTIES TO I.A. No.39 AND 40

Applicant/s : *Mallappa Basappa Katti.*

.Vs.

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

- i. *Provision under which : I.A. No.39 – under Sec.151 of
application is filed CPC
I.A. No.40 – under Order
XVIII Rule 17 R/w Sec.151 of
CPC.*

- ii. Relief sought for : Seeking to set aside the order dated:02.07.2025 and recall the D.W.1 for the purpose of cross examination.
- iii. The date on which : 02.12.2025 application is filed
- iv. Number of the : 39 & 40 application
- v. The date on which : 13.01.2026 (by plaintiff) objections are filed by different opponents
- vi. The date on which : 21.01.2026 orders were passed on the said application

COMMON ORDERS ON I.A No.39 AND 40

The counsel for the defendants have filed I.A. No.39 and 40 under Sec.151 of CPC and under Order XVIII Rule 17 R/w Sec.151 of CPC, seeking to set aside the order dated:02.07.2025 and recall the D.W.1 for the purpose of cross examination.

2. The plaintiffs have filed separate objections to I.A. No.39 and 40.

3. Heard arguments.

4. The points for consideration are:

- 1. Whether the reliefs sought by the defendants in the applications, can be granted ?
- 2. What order ?

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

REASONS

6. **Point No.1:** In the annexed affidavit the defendant No.9 averred that, the above matter was posted for argument. However, due to non availability of some material documents, he could not contact his counsel and he was unable to appear before this Court on the said date. His non appearance for his cross examination on the said date was neither intentional nor deliberate. He has material facts to be brought on record by way of his cross examination. Hence, it is just and necessary to reopen his side enabling him for cross examination by the plaintiff side, as otherwise he will be put to much loss and injustice which cannot be compensated in terms of money on the contrary no loss or prejudice will be caused to the plaintiff. Hence, prayed to allow the applications.

7. The objections of the plaintiff is that the applicant has no right to file an application to "re-open the plaintiff side enabling the plaintiff to cross examine DW-1". It is applicants over enthusiastic approach to cover his own lacuna. Plaintiff was vigilant in conducting the case. Defendant lead his evidence and did not offer himself for cross examination. Noting

absence of DW-1 this Hon'ble Court was please to reject the prayer of defendant counsel and posted the matter for argument on 02.07.2025. There is no order adversely affecting the plaintiff. Deponent shall have to show to the satisfaction of Hon'ble Court a reasonable cause for witness non-availability for cross examination; but there is no such reason.

It is further submitted that the following table shall expose the applicant D.W.1 and falsify his affidavit:

<i>Sl. No.</i>	<i>Date</i>	<i>Proceedings</i>
<i>1.</i>	<i>05.02.2025</i>	<i>For defense evidence</i>
<i>2.</i>	<i>12.02.2025</i>	<i>Prayed time</i>
<i>3.</i>	<i>13.02.2025</i>	<i>Prayed time</i>
<i>4.</i>	<i>18.02.2025</i>	<i>Prayed time – rejected-evidence taken as nil.</i>
<i>5.</i>	<i>21.02.2025</i>	<i>Posted for arguments.</i>
<i>6.</i>	<i>14.03.2025</i>	<i>Defendant filed application under Order XVIII Rule 17, to re-call etc. - cost of Rs.200/- imposes.</i>
<i>7.</i>	<i>21.03.2025</i>	<i>Prayed time for defendant evidence</i>
<i>8.</i>	<i>24.03.2025</i>	<i>Prayed time for defendant evidence</i>
<i>9.</i>	<i>04.04.2025</i>	<i>Prayed time for defendant evidence</i>
<i>10.</i>	<i>17.04.2025</i>	<i>Partly examined</i>
<i>11.</i>	<i>24.04.2025</i>	<i>Prays time for further evidence</i>
<i>12.</i>	<i>03.06.2025</i>	<i>Prays time for further evidence</i>
<i>13.</i>	<i>12.06.2025</i>	<i>Advocate for defendant submits no further evidence – posted for croxx examination of D.W.1</i>
<i>14.</i>	<i>23.06.2025</i>	<i>DW-1 Absent</i>
<i>15.</i>	<i>24.06.2025</i>	<i>DW-1 Absent</i>
<i>16.</i>	<i>02.07.2025</i>	<i>DW-1 Absent – case kept by- case called out at 1:10 pm counsel for defendant seeks time to keep DW-1 present – already sufficient time</i>

has been provided and matter is old one. Hence prayer of defendant counsel is hereby rejected – case posted for argument

17. 19.11.2025 *Defendant filed this application*

No hardship whatsoever would be caused to applicant if the application is dismissed. Hence, prayed to dismiss the application.

8. *On perusal of the entire material available on record it is noticed to the Court that this is the suit filed by the plaintiff against the defendants for the relief of partition and separate possession in respect of the suit schedule properties. Wherein this suit already evidence of the parties are completed and in the stage of arguments, they came with these applications seeking the above said relief sought under I.A. No.39 and 40. No doubt this Court has granted sufficient opportunity to the D.W.1 to lead their evidence, but they have not lead their evidence till matter has been set down for arguments. Now they came up with the present applications seeking permission to reopen and depose the evidence of defendants by recalling D.W.1. Admittedly, already chief affidavit of D.W.1 filed and when the matter is set down for cross examination D.W.1 has not tender for cross examination and matter was set down for arguments on merits. By that time the counsel for plaintiff filed applications for reopen and*

*recall of P.W.1 and said applications were allowed on cost and further chief examination of the P.W.1 also adduced. In the meanwhile the defendant filed application for production of documents and it was also allowed payment of cost. After completion of these are the stages the D.W.1 filed the present applications for same relief and again said applications were withdrawn by them and once again similar application have been filed i.e., the present applications. Admittedly, this is the suit filed by the plaintiff against the defendants for partition and separate possession. No doubt if the applications are allowed, it would cause inordinate delay to the otherside. Anyhow the delay may be compensated by way of suitable cost to otherside. On the other hand, delay is not a criteria to dismiss the applications. Hence, this Court is of the opinion that the I.A. No.39 and 40 may be allowed on payment of cost to compensate the other side and in order to provide an opportunity to the D.W.1 to prove his case. Hence, I answer the **point No.1 in the affirmative.***

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

ORDER

The I.A. No.39 and 40 filed by the defendants under Sec.151 of CPC and under Order 18 Rule 17 R/w Sec.151 of

C.P.C. are hereby allowed on payment of cost of Rs.500/- each.

Case is reopened and D.W.1 is recalled for the purpose of cross examination subject to payment of cost.

The D.W.1 is hereby directed to appear on next date of hearing without adjournment as the matter is old one.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **21st day of January, 2026**)*

sd/-

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