

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.405/2023

Dated this the 29th day of April, 2026

Plaintiff : Smt. Ashwini W/o Manjunath Madiwalar
and others.

.Vs.

Defendant : Smt. Kamalavva W/o Gadigeppa
Madiwalar and others.

PARTIES TO I.A. No.VI to VIII

Applicant/s : Smt. Ashwini W/o Manjunath Madiwalar
and others.

.Vs.

Opponent/s : Smt. Kamalavva W/o Gadigeppa
Madiwalar and others.

- i. *Provision under which application is filed* : I.A. No.VI & VII - under Sec.151 of CPC.
I.A. No.VIII – under Order VII Rule 14
R/w Sec.151 of CPC.
- ii. *Relief sought for* : I.A. No.VI & VII - Seeking an order to
set aside the order dated:07.04.2025
and to recall the P.W.1 for the purpose
of further cross examination in chief.
I.A. No.VIII - seeking leave to produce
the documents.
- iii. *The date on which application is filed* : 18.08.2025

- iv. Number of the : VI to VIII
application
- v. The date on which : 15.09.2025 (by D.1)
objections are filed by
different opponents
- vi. The date on which : 29.04.2026
orders were passed on
the said application

COMMON ORDERS ON I.A. No.VI TO VIII

The counsel for plaintiffs have filed an applications under Sec.151 of C.P.C., seeking an order to set aside the order dated:07.04.2025 and to recall the P.W.1 for the purpose of further examination in chief and another application under Order VII Rule 14 R/w Sec.151 of C.P.C., seeking leave to produce the documents.

2. The defendant No.1 has filed separate objections to the I.A. No.VI to VIII.

3. Heard arguments.

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

“Whether the reliefs sought by the plaintiffs 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. The applicant

filed his affidavit in support of the present applications and contended that the plaintiff No.1 entered into the witness box as P.W.1 and given her evidence and the case was fixed on the board of 07.04.2025 for further chief of P.W.1. On 07.04.2025, noticing failure to lead her further chief this Court has pass an order the further examination in chief of P.W.1 is taken as nil and also to failed to appear for cross examination by the other side and posted the case for defendant evidence. Hence, it is necessary to set aside the said order and reopen the case for further examination in chief of P.W.1. On the aforesaid day, she is not able to attend before this Court due to ill health suffered by her and even she has to obtain some gram panchayath records pertaining to this case and furnish required information to her counsel to prepare her further chief and submit before this Court. It is further averred that, failure on her part to prosecute the case is neither intentional one nor deliberate one. But, the same is due to the bonafide reason of ill-health suffered by her and other reasons stated above.

It is further averred that she producing some relevant documents as now she has obtained the documents from the concerned Gram panchayat. The said documents are public document, which are beyond suspicious. The said documents reveal the real facts involved in this suit. The said documents will help this Court to decide this suit on merits. If the applications are allowed no loss or injustice hardship would be caused to them. On the contrary they

will suffer great loss, injustice and hardship which cannot be compensated by any means. Hence, prayed to allow the applications.

7. The objections of the defendant No.1 is that, the applications are illegal, improper and the same are not tenable either in law or on facts of the case. The plaintiff examined as P.W.1 on 18.02.2025 and posted for further chief of P.W.1. The Court after giving sufficient opportunity passed the order on 07.04.2025 as further chief of P.W.1 is taken as nil and posted for cross examination. The plaintiff has failed to lead further chief of P.W.1, the Court passed order and also plaintiff failed to appear for cross examination. In spite of sufficient time and giving several opportunity plaintiff was failed to lead her evidence and produce the document. Therefore, on the above reasons it shows that the plaintiff is not interested to proceed the suit. Hence, prayed to dismiss the applications with costs.

8. On perusal of the entire materials available on record it is noticed to the Court that admittedly this is the suit for partition and separate possession, when the matter has been set down for defendant evidence, the plaintiffs came up with these applications seeking above said relief. As per his contention the suit was posted for cross examination on 09.07.2025 and the P.W.1 was failed to appear for cross examination by the other side, noting the absence this Court was pleased to take evidence of P.W.1 as nil and posted for defendant

evidence. Admittedly, since 07.04.2025 matter was set down for cross of P.W.1, before that they have taken sufficient time for further chief of P.W.1, later this Court taken the further chief of P.W.1 as nil and set down the matter for cross of P.W.1, by that time i.e., 24.04.2025, 12.06.2025, 26.06.2025 and 09.07.2025 the P.W.1 continuously absent before the Court and no representation on behalf of the plaintiff. Therefore, adverse order has been passed and matter was set down for defendant evidence.

At the outset, it is to be noted that the present suit is one for partition. Very determination of rights of parties in immovable property is involved. In such suits, the court is expected to adopt a liberal approach so as to ensure complete and effective adjudication of a dispute. It is true that the matter was posted for defendant's evidence. And that the plaintiff had earlier opportunities. However, mere delay or latches on the part of the plaintiff cannot be a sole ground to shut out evidence if such evidence is necessary for proper adjudication of the case. The plaintiff seeks to produce documents which prima facie appears to be a relevant document concerning the Suit schedule property. Non consideration of such material evidence may result in failure of justice. Further, the recall of PW1 is sought only for the purpose of further chief examination and not to fill up lacuna in a deliberate manner. But to place certain documents on record, no serious prejudice would be caused to the defendants. As they will have full

opportunity to cross examine PW1 on the additional evidence.

The Hon'ble Supreme Court and various Hon'ble High Courts have consistently held that procedural laws are handmaids of justice, and technicalities should not come in the way of adjudication on merits. Particularly when no irreparable prejudice is caused to the opposite party. As regards delay is concerned, the explanation offered by the plaintiff, though not very convincing, can be accepted in the interest of justice. Subject to terms, denial of opportunity would result in multiplicity of proceedings and may lead to further complications.

At the same time, the conduct of the plaintiff shows lack of diligence. Therefore, the same requires to be compensated by imposing costs. In view of the above, this Court is of the opinion that the applications deserves to be allowed subject to conditions and I answer the **point No.1 in affirmative**. I proceed to pass the following:

ORDER

I.A. No.VI to VIII filed by the plaintiffs under Sec.151 of CPC and under Order VII Rule 14 R/w Sec.151 of CPC are hereby allowed on payment of cost of Rs.1000/-.

Resultantly, case is reopened and P.W.1 is recalled for the limited purpose of further chief examination and marking of documents.

The plaintiff shall complete further chief

examination of PW1 on the next date of hearing without seeking adjournment.

The defendants are at liberty to cross-examine PW1. Failure to comply with the above conditions will result in automatic dismissal of the applications.

For further chief of P.W.1.

Call on 04-06-2026.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **29th day of April, 2026**)*

sd/-

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