

ORDER ON I.A.No.16 AND 17

The plaintiffs have filed I.A.No.16 u/sec.151 of CPC for reopen of case and I.A.No.17 u/o 18 rule 17 of CPC for recall of DW.2 for cross examination. These applications are supported with memo of facts of learned counsel for plaintiffs. It is submitted that due to heavy rain plaintiffs unable to attend the court and their distant relative admitted to hospital, therefore, cross of DW.2 is taken as nil. The absence of plaintiffs is not intentional or deliberate. Therefore, it is necessary to recall the DW.2 for cross examination. If the application is not allowed they will be put into loss and injustice. Hence, prays for allowing the application.

3. The defendant No.2(a) to (e) have filed objections denying the contents of application. It is contended that the application contents are false and not maintainable. DW.2 was cross examined in part and matter was posted for further cross examination

by giving opportunity to the plaintiffs. In spite of opportunity they have not cross examined DW.2. Now the plaintiffs have filed these applications without sufficient grounds. Therefore, prays for dismissal of application with cost.

4. Heard the arguments.

5. The points arise for my consideration are:

1. Whether the applicants/plaintiffs have made out sufficient grounds to recall DW.2 for cross examination?
2. What order?

6. My findings on the above points are:

POINT No.1 : In the Affirmative

POINT No.2 : As per the final order
for the following

REASONS

7. **POINT No.1**: The plaintiffs have filed suit for partition and separate possession and for declaration. DW.2 was cross examined in part at that time interim applications were filed for impleading parties and thereafter amendment application was filed by the plaintiffs. After disposal of interim applications the matter was posted for cross of DW.2. In spite of

granting time the plaintiffs have not cross examined DW.2. Therefore, further cross of DW.2 is taken as nil and matter is posted for arguments. Now the plaintiffs have filed these applications for reopen of case and recall of DW.2 for further cross examination.

It is submitted that plaintiffs are absent due to heavy rain at Goa and they are unable to attend the court. The plaintiffs have filed suit for partition and separate possession. The right of property is involved in the matter. In order to bring the truth it is necessary to given opportunity to the plaintiffs to cross examine the DW.2. However, plaintiffs are not deligent in conducting case, therefore, cost is to be imposed which will meet ends of justice. Hence, I have answered point No.1 in the affirmative.

9. **POINT No.2:** As discussed above, court proceed to pass the following:

ORDER

The application filed by the applicants/ plaintiffs U/o 151 of CPC and u/o 18 Rule 17 of CPC are hereby allowed on payment of cost of Rs.500/- to be paid to the DW.2

The case is recalled for further cross of
DW.2.

Call on: 05.08.2025.

(Dictated to stenographer directly on computer,
typed by him, then corrected, printed and pronounced
by me in the open court on this **23rd day of July 2025**)

(R.L.HONOLE)
SR. CIVIL JUDGE AND JMFC,
KALAGHATAGI