



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **SRI. SRINIVASA.S.N.,**
Civil Judge and JMFC.,
Savanur.

O.S.No.129/2010

Dated, this day of 11th day of March, 2026

Plaintiffs : Smt. Chandravva W/o Govindappa Lamani- since
dead represented by her LRs. and others
[By Sri N.S.P., Advocate]

V/s

Defendants : Smt. Gangavva W/o Balappa Chikkawade &
others
[By Sri M.R.B., Advocate]

PARTIES IN IA-XXIII

Applicants : Smt. Gangavva W/o Balappa Chikkawade &
[Defendants] others

Vs

OPPONENT : Smt. Chandravva W/o Govindappa Lamani &
[Plaintiffs] others

i	Provision under which the application is filed :	U/O. XVIII Rule 17 read with Section 151 of CPC
ii	Relief sought for :	Seeking to recall PW-2 for further cross examination
iii	The date on which the application is filed :	27-02-2026



iv	The date on which the objection is filed by opponents:	06-03-2026
v	The date on which the order is passed on the said applications	11-03-2026

ORDER ON I.A.NO.XXIII

The present application (I.A. No.XXIII) is filed by the defendants under Order XVIII Rule 17 read with Section 151 of CPC seeking to recall P.W.2 for further cross-examination by setting aside the order dated 20-02-2026, in the interest of justice and equity.

2. It is stated in the annexed affidavit that, the matter was posted on 20-02-2026 for cross-examination of P.W.2. Due to oversight, some material questions could not be put to the witness during cross-examination. Hence, it is necessary to recall P.W.2 for further cross-examination in order to bring the material facts on record. It is further contended that if the application is not allowed, the defendants would suffer irreparable loss and injury, whereas no prejudice would be caused to the plaintiff. Accordingly, prayed to allow the application.

3. Per contra, the plaintiff counsel has filed objection contending that the application is false, frivolous and filed only with an intention to drag the proceedings. It is contended that the



defendants counsel has already cross-examined P.W.2 at length in accordance with their defence set up in the written statement. It is further contended that after completion of cross-examination of P.W.2 and after commencement of cross-examination of P.W.3, the present application is filed without any valid reasons only to delay the disposal of the suit. Hence, the plaintiff has prayed to reject the application with costs.

4. Heard both the counsels. Perused the application, the objection and material available on record.

5. The points arise for my consideration is as follows,

POINTS

1. **Whether the defendants have made out sufficient grounds to allow the I.A.No.XXIII ?**

2. **What order?**

6. My findings are as follows,

Point No-1 : Partly in the Affirmative.

Point No-2 : As per final order, for following:-

REASONS

7. **Point No-1 :** On perusal of the records, it reveals that the plaintiff has filed the present suit against the defendants seeking



the relief of partition and separate possession in respect of the suit schedule properties. The present application has been filed at the stage of cross-examination of P.W.3.

8. I have heard the arguments of both sides and carefully perused the pleadings and the order sheet. It is true that the present application is filed at the stage of cross-examination of P.W.3. However, the suit is one for partition and separate possession, and in such matters the Court is required to ensure that the real controversy relating to the suit properties is adjudicated on merits.

9. On perusal of the order sheet, it discloses that P.W.2 was cross-examined by the defendants and by order dated 20-02-2026 the cross-examination of P.W.2 was treated as fully completed. Thereafter, the case has progressed and is presently posted for cross-examination of P.W.3.

10. It is well settled that the power under Order XVIII Rule 17 of CPC has to be exercised cautiously and cannot ordinarily be invoked to enable a party to fill up lacuna in its case. However, the primary duty of the Court is to ensure that the real dispute between the parties is effectively adjudicated. If an opportunity to



put certain material questions to a witness is denied, it may result in prejudice to the concerned party.

11. In the present case, though the defendants have already cross-examined P.W.2, they have contended that due to oversight certain material questions could not be put to the witness. Considering the nature of the suit and in order to provide fair and reasonable opportunity to the defendants to properly present their defence, this Court is of the opinion that one more opportunity can be granted to the defendants to further cross-examine P.W.2.

12. It is true that the defendants have not stated strong or convincing reasons in the application for recalling the PW-3. However, the Court is required to provide reasonable opportunity to the parties to establish their case in support of their respective contentions. Moreover, the present suit is nearly 15 years old, and if the application is rejected, there is every possibility of further proceedings which may again delay the disposal of the suit. Therefore, in order to avoid multiplicity of proceedings and in the interest of justice, this Court is of the opinion that the application deserves to be allowed subject to costs and certain conditions. Accordingly, ***Point No.1 is answered partly in the Affirmative.***



13. Point No-2: For the foregoing reasons, this court proceed to pass the following;

ORDER

I.A.No.XXIII filed under Order XVIII Rule 17 read with Section 151 of CPC by the defendants is hereby allowed on cost of Rs.500/- subject to condition that the defendants shall complete the cross examination of PW-2 within one date of hearing without seeking any further adjournment.

The plaintiff's counsel is hereby directed to keep P.W.3 present, on the next date of hearing.

(Dictated to the stenographer on computer, corrected, signed and then pronounced by me in the Open Court on this the 11th day of March, 2026)

**(SRINIVASA. S.N)
Civil Judge and JMFC,
Savanur**