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**IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI*****Present*****Sri. Kashinath V. Uppar****B.Sc. LL.B.****Civil Judge & JMFC., Jewargi.****O.S. No. 112/2016****Dated on this the 28<sup>th</sup> day of February-2025****ORIGINAL SUIT No.112/2016****PLAINTIFF :** Devanna S/o Hanamantraya,**(By. Sri.S.K., Advocate)**V/s.**DEFENDANTS:** 1. Nagappa S/o Tejappa & others.**(By Sri. V.K., Advocate)**

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**PARTIES TO I.A. No.12 & 13****APPLICANT/  
PLAINTIFF** : 1. Nagappa S/o Tejappa & others.

V/S

**OPPONENT/  
DEFENDANTS** : Devanna S/o Hanamantraya,**COMMON ORDER ON I.A.No.12 & 13**

The Learned Counsel for the defendants has filed I.A.No.12 U/Sec.151 of CPC for reopen, and I.A.No.13 U/O 18 Rule 17 of CPC, for recall PW-1 for his cross-examination.

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2. The defendant No.1 has sworn to an affidavit in support of the application, wherein he has stated that, the case is posted for evidence of defendants side, that due to non-instruction from the parties the counsel for the defendants No.1 to 8 the defendants could not cross examine the PW-1 and hence the hon'ble court was pleased to take cross-examination Nil from the defendants side and close the side of plaintiff evidence and posted for defendants evidence. That the defendant intends to cross the PW-1. Therefore if the plaintiff side evidence is reopened only for the purpose of cross examine PW-1, no harm and prejudice will cause to the other side. On the contrary it will enable the hon'ble court to adjudicate the matter effective and finally. **With these averments the defendants have sought for allowing the I.A.No.12 and 13.**

3. The learned Counsel for the plaintiff filed objections to the application wherein, the plaintiff has examined as PW-1 on 25-7-2024 and adjourned for examination. The defendant remained absent and his counsel also remained absent. For last 06 months the defendant's counsel was not examined. So hon'ble court closed the evidence of plaintiff and posted for evidence of defendant. The plaintiff has not assigned any reasons how he was prevented to cross-examine the PW-1 and remained absent for lost 06 month no special reasons assigned to allow the application for cross- examination of PW-1. **With**

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**these contentions, the Defendant has sought for rejection of I.A No.26 to 28.**

4. Heard the Learned Counsels appearing for the parties and perused the materials on record.

5. Now the following points arise for consideration of this Court are.

**Point No.1: Whether the defendants have made out grounds for allowing I.A.No.12 and 13 as sought for?**

**Point No.2 : What Order?**

6. The findings of this Court on the above points are as under:

**Point No.1 : *In the Affirmative***

**Point No.2 : *As per the final order for the following***

### **REASONS**

7. **Point No.1:** Admittedly, this suit is filed by the Plaintiff against the Defendants for seeking the relief of partition and separate possession. No doubt when the case is posted for defendants evidence. The present applications are filed by the defendants for recall of PW-1 for his cross-examination. It is the contention of defendants on last date hearing due to non-instruction from the parties to the counsel for defendant

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No.1 to 8, he could not cross-examine the PW-1. Per contra, counsel for plaintiff filed a objection that, the defendant has not assigned any reason how he was prevented to cross-examine the PW-1 and remained absent for last 06 months no special reasons to assign to allow the said application. The objections filed by the counsel for plaintiff it is not a solo ground for reject the said application. No doubt there is an delay part of the defendants filing this application. But due to proper adjudication of this case and to meet the ends of justice, the delay in filing the application has to be viewed liberally and some cost has to be awarded to the plaintiffs. With these observations, this Court has answered Point No.1 in the Affirmative.

8. **Point No.2:-** For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

**ORDER**

I.A.No.12 filed U/Sec.151 of CPC, for reopen the Plaintiffs case, I.A.No.13 filed under Order 18 Rule 17 R/W Sec.151 of CPC for recall of PW-1 for cross-examination are hereby allowed on cost of Rs.1000/-.

(Dictated to the Stenographer directly on the computer, typed by him, script revised and corrected and then pronounced by me in the

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Open Court on this 28<sup>th</sup> day of February-2025).

**(Kashinath V. Uppar)**  
**Civil Judge & JMFC,**  
Jewargi.

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