

KAKL200002792011



**IN THE COURT OF THE PRL., CIVIL JUDGE AND JMFC
AT BANGARPET**

PRESENT:
SMT. SUKEETA S. HADLI,
B.B.A.,LL.B.,(Hons)
PRL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.251/2011

DATED THIS 22ND DAY OF APRIL 2026

PLAINTIFF/S : Renuka and others.,
(Rep. by Sri.**V.P.**, Advocate)

-V/S-

DEFENDANT/S: Venkatappa & others.,
(D1 Rep. by Sri.**K.V.P.**,
D2 Rep. by Sri.**M.V.**,
D3 to 6 Rep. by Sri.**N.N.**,
D7 Rep. by Sri.**A.M.R.**,
Advocates)

PARTIES TO I.A.NOS.18 & 19

Applicant : Srinivasa.,

-V/S-

Opponent : Renuka and others.,

COMMON ORDERS ON I.A. NOS. 18 and 19

The defendant No.7 has filed the I.A. Nos.18 and 19 under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure seeking to re-call of PW.1 for further cross-examination and under Section 151 of the Code of Civil Procedure seeking to re-open the case for further cross-examination of PW.1.

2. In the affidavit accompanying the application, it is stated that the plaintiffs have filed the suit for partition and separate possession. It is stated that the present case is now posted for arguments. According to the applicant while contesting the matter on merit, at the stage of earlier cross-examination certain question with regard to Exs-D.9 and 10 cannot be put to PW.1 due to oversight. It is specifically stated that after engaging new counsel, the necessity of putting such questions came to the knowledge of the applicant. Those questions are relevant for proving the case of defendant No.7 particularly with respect to the nature of acquisition of property involved in the suit. It is stated that cross-examination in the proposed line is

important for adjudicating the matter and for establishing that item No.4 of the suit schedule property in the self-acquired property. It is asserted that re-opening the stage of evidence and re-calling PW.1 would assist the Court for deciding the real controversy. On these grounds the defendant No.7 prays to allow the application.

3. The plaintiff has filed common objections. The plaintiff has contended that after filing of the suit for partition, written statement was filed, issues were framed and parties were given sufficient opportunities to adduce both oral and documentary evidence. It is stated that defendant No.7 has had full opportunity to contest the case on merits.

4. The plaintiff has further contended that after closure of evidence on both sides and after hearing arguments of both sides the case is already reached the stage of judgment. Application for re-call PW.1 at this stage is not known to the law. According to them, the application is filed only to fill the lacuna on the part of defendant No.7.

On these grounds the plaintiffs prays to reject the application.

5. I have heard the learned counsel for both sides and perused the material on record.

6. The following points arise for consideration:-

1. Whether the defendant No.7 has made out sufficient grounds to reopen the case and recall PW-1 for further cross-examination?
2. What order?

7. After hearing the arguments and on considering the relevant materials on record, my findings on the above points are hereunder:-

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

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

REASONS

8. Point No.1: At the outset it is necessary to note that the present suit is one for partition and separate possession. The application in hand came to be filed at the stage of arguments. In a suit of this nature the Court is

required to determine the character of the properties, entitlement of parties and the rival claims with reference to the pleadings and evidence. Such adjudication has to be comprehensive, since the judgment in partition suit requires final determination of the civil rights of all sharers. Therefore, while considering the application of this nature the Court is required to balance two competing considerations. One is the need for progress and finality of trial. The other is duty of the Court to ensure that real controversy is adjudicated on merits.

9. In the present case, the applicant has specifically stated that certain questions concerning Ex.D.9 and 10 can not be put during earlier cross-examination due to oversight and that after engaging the new counsel the necessity of putting those questions has come to light. The affidavit discloses the purpose behind the re-call. It is stated that further cross-examination of PW.1 is required to establish the nature of acquisition of property and in particular to put forward the case that item No.4 is self-acquired property. Thus, it is not a case where applicant has made bald and

vague without disposing any performance. The affidavit indicates the area on which further cross-examination is sought and the connection of that with a defence set up by defendant No.7.

10. The objections filed by the plaintiff that, the suit is old, ample opportunities were given and matter is reached the stage of arguments. This Court is conscious of all these aspects. The delay in disposal of old matter is a serious concern. However, that the Court also has to examine the nature of proposed evidence and where revaluation of such opportunity would result in setting out the material defence all together. If the proposed further cross-examination has a direct bearing on the nature of property and core controversy between the parties, a limited indulgence may be wanted. It is false to contend that once the matter is posted for judgment, the case cannot be brought back for any other purpose. There is no inflexible rule. So long as the judgment is not pronounced the Court retains control over the proceedings and in an appropriate case, the Court can

re-open or re-call if such course is necessary of avoid failure of justice.

11. With respect to the contention of filing up of lacuna, it is pertinent to note that there is a difference between filing up lacuna and allowing clarification on material points. If certain questions relevant to exhibits cannot be put, and their omission becomes significant for the proper adjudication, then a request in that regard cannot be automatically termed an attempt to fill a lacuna. Each case has to be examined on its own facts. Viewed from all these angles this Court is of the opinion that one final and limited opportunity deserves to be granted to defendant No.7 for further cross-examination of PW.1 subject to terms.

Accordingly, Point No.1 is answered in the Affirmative.

12. Point No.2: In view of the above discussion and findings, the Court proceeds to pass the following:

ORDER

The I.A. Nos. 18 and 19 filed by the defendant No.7 under Order XVIII Rule 17 read with Section 151 of CPC

are hereby allowed on cost of Rs.1,000/-.

Defendant No.7 is permitted to recall PW.1 for limited further cross-examination.

Further cross-examination shall be confined to aspects particularly with reference to Exs. D.9 and 10 and shall not extend to matters already covered.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **22nd day of April 2026.**)*

**Prl., Civil Judge and J.M.F.C.,
Bangarpet.**