

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

PRESENT : **Sri. A.C. DAYANANDMURTHY,**
B.A., LL.M.,
Prl. Civil Judge & JMFC, Bangarpet.

Dated this the 21st day of November 2020

OS.283/2015

Plaintiff : H.D. Venkateshappa

(By Sri. SK.-Adv)

Vs

Defendant:- Thimmarayappa

(Sri.KVS Advocate)

ORDERS ON IA-5

The defendant counsel filed IA-5 under order 18 rule 14 read with Section 151 of CPC., for re-call PW-1 and further permit him before the court for the purpose of cross-examination by the defendant.

2. The defendant has sworned in his affidavit stating that on the previous date of hearing he was

absent and also his counsel remained absent. The learned counsel for the defendant appeared before the Addl. Court due to inconvenience he could not be able to present before the court and his counsel could not be able to submit anything before the court. Hence, court took cross-examination of PW-1 is nil. Therefore, the defendant filed this application to recall PW-1 and permit him to cross-examination of PW-1.

3. On the other hand the defendant counsel has not filed objections and he has no objections to allow the application.

4. Heard arguments.

5. The points that would arise for my consideration are as under:

1. Whether the IA5 filed by the defendant under order 18 rule 14 read with section 151 of CPC to recall PW-1 to permit him to cross-examine the PW-1 is deserves to be allowed?
2. What order?

6. My findings on the above points are as follows:-

Point No.1 : In the Negative

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

R E A S O N S

7. **Point No.1 :** Admittedly, this is a suit filed by the plaintiff against the defendant for the relief of partition, separate possession and such other reliefs. Due to the absent of the counsel for defendant and defendant the cross-examination of PW-1 is taken as nil. But the counsel for the defendant filed this I.A. for re-call PW-1 and permit the defendant for cross-examination of PW-1.

8. The learned counsel for plaintiff submits that he has no objections to allow IA-5. While perusing the submission made by the plaintiff counsel and submission of defendant counsel regarding IA-5 both parties have no objections to allow IA-5 for the purpose of cross-examination of PW-1 and re-call PW-1.

9. Though there is no dispute to allow the application as per Rule 23 of Civil Rules of Practice clearly stated that every inter-locutory application should have one prayer. But, while perusing IA-5 the defendant clearly filed an application for re-call PW-1 and to permit the defendant to cross-examine PW-1. While perusing the said application, in an application the defendant counsel seeks prayer hence, it is not in accordance with law. Though there is no objections submitted by the plaintiff counsel, it is the duty of the court to look in to the legal aspect also. By keeping the above said facts in mind, court by exercising discretionary power court allow the application in partly.

10. While perusing the application, facts and circumstances of the case, court feels that re-call PW-1 is to be allowed. Hence application filed by the defendant counsel for re-call PW-1 is hereby allowed and the defendant should file another application to permit him to cross-examine PW-1 is hereby rejected. In such circumstances, if the application is allowed there is no purpose served by allowing

this application. Hence application filed by the defendant is not maintainable in accordance with law. **Hence point no.1 is answered in the Negative.**

11. **Point No.2**:- For the reasons given in point No. 1, I proceed to pass the following:

ORDER

The IA No. 5 filed by the defendant under order 18 rule 14 read with section 151 of CPC is hereby rejected.

In view of the above facts and circumstances, there is no order as to costs.

(Dictated to the Stenographer typed by him corrected and then pronounced by me in the Open Court on 21st day of November 2020)

(A.C. DAYANANDMURTHY)
Prl. Civil Judge & JMFC.,Bangarpet