

ORDER ON I.A.NO. IV & V

The learned counsel for defendants has filed this IA No.IV U/o 18 Rule 17 r/w Sec.151 of CPC and IA No.V U/sec.151 of CPC., seeking to recall PW.1 for cross examination by reopening the stage.

2. In an accompanying affidavits, the defendant No.1 stated that on 22.04.2026, she could not appear before the court and able to give proper instruction to her counsel due ill health and personal inconvenience. Therefore, it is just and necessary to reopen the case and to recall P.W.1 for cross examination. If court doesn't allow these applications, an untold hardship will be caused to the plaintiffs. Accordingly the learned counsel for defendants prays to allow both IAs.

3. Even after sufficient opportunities, the plaintiffs failed to file objections.

4. Heard both side and perused the materials.

5. The present suit is for the relief of declaration and permanent injunction. The defendants filed written statement on 16.07.2024 and this court framed issues on 10.06.2025. Order sheet discloses that plaintiff examined himself as PW.1 and also examined witness on his behalf as PW.2 on 18.01.2024 and 13.06.2024 i.e., before filing of written statement. PW.1 present on 13.03.2026 and adjournment granted at the request of learned counsel for defendants. Even on 22.04.2026, PW.1 was present and cross examination of PW.1 was taken as nil by rejecting request of learned counsel for defendant.

6. Rule 17 of Order XVIII C.P.C. states that *“the court may at any stage of the suit recall any witness who has been examined”*. As per the above provision, the court may permit the party to recall any witness for further examination at any stage of the suit that includes the stage even after completion the evidence of the parties. However, it is the discretionary power of the Court.

7. On perusal of case file, it discloses that defendants have not cross examined PW.1 and have come up with similar applications and after resistance of plaintiffs by filing objections, this court allowed said I.A.No.IV and V to recall PW.1 for cross examination by reopening stage was allowed on cost of Rs.1000/- each vide order dated 29.08.2025 with a condition to cross examine PW.1 without seeking any adjournment. Order sheet discloses that though, this court directed so. the defendants to failed to cross

examine PW.1 on 11.09.2025 and have also failed to pay cost. Thus, this court rejected the prayer of defendants and taken cross examination of PW.1 as nil. Further cross examination of PW.2 is taken as not tendered.

8. Thereafter, the defendants come with instant applications when case posted for defendant evidence.

9. Order 18 Rule 17 CPC., is to be exercised sparingly. The provision is not intended to enable the parties to recall any witness for further examination. It is primarily to enable the Court to clarify any issue or doubt by recalling any witness either suo motu or on application of any party so that the Court can itself put questions and elicit answers.

10. On careful perusal of entire case file, it reveals that defendants have not cross examined PW.1. In-spite of looking to the demeanor of defendants in contesting the case, it is just and necessary to give one more opportunity to the defendants to cross examine the PW.1 by considering the principle of natural justice. Hence cross examination of PW.1 is essential for just disposal of the case and avoid multiplicity of the proceedings. It is to be noted that this repeated applications are filed without adhering to the fair participation in the suit and no justifiable reasons are made out in the applications. By keeping all these aspects in mind, I am of the opinion that it is necessary to allow the I.As by imposing cost in the ends of justice and equity & also for the proper adjudication of the case and also in order to avoid the multiplicity of proceedings. Hence, I proceed to pass the following:-

:: O R D E R ::

I.A.No.IV & V filed by learned counsel for the defendants is hereby ***allowed*** on cost of Rs.150/- each.

Both IA's are allowed with a condition as to keep present PW.1 on next date of hearing before the court and counsel for defendants to cross examine PW.1 without seeking adjournment since matter is of the year 2023.

Payment of cost is condition precedent for cross examination of PW.1.

Call on: **29.07.2026.**

**Prl. Civil Judge & JMFC,
Mulbagal.**