

Order on I.A.No.13

The learned counsel Defendant Nos.3 to 8 has filed this application u/o.XVIII Rule 17 r/w.sec.151 of C.P.C with a prayer to recall PW-1 for his cross-examination by setting aside the earlier order dated 28/07/2023 regarding cross of PW-1 taken as Nil, in the interest of justice. On the other hand, the very application is objected by the Plaintiff and prayed to dismiss the same.

2. In the accompanying Affidavit filed in support of the aforesaid application, the Defendant No.8 has stated that they have not given proper information to their counsel to conduct the case on their behalf. As such, their counsel remained absent before this court when the case is posted for cross of PW-2 on 28/07/2023, thereby this court took the cross-examination as nil. Therefore, it is necessary to recall PW-1 for cross-examination. If the application is not allowed, they would be put to great hardship and loss. Therefore, it is prayed to allow the application in the interest of justice.

3. For the above said application, the learned counsel for the Defendant No.1 got filed the objections contending that the application is not maintainable either on law or on facts. The Plaintiff and Defendant Nos.3 to 8 have colluded with each other. Despite of giving sufficient opportunities by this

court, the Defendant Nos.3 to 8 intentionally avoided the cross-examination of PW-1 with an intention to fill up the lacuna after cross-examination by Defendant No.1. This conduct is nothing but misuse of process of law and tactics adopted by the Plaintiff and Defendant Nos.3 to 8. The matter is old one, if the I.A is allowed, it will cause serious prejudice to the rights of Defendant No.1. In case, if it is allowed, opportunity should be given to Defendant No.1 to recross the PW-1. Hence, it is prayed to reject the application with cost in the interest of justice.

4. Heard both the counsels.

5. Now the points that arise for my consideration are that:

1) Whether the Defendant Nos.3 to 8 have made out sufficient grounds to allow the application to recall PW-1 for his cross-examination?

2) What order?

6. My findings on the above points are as under:

Point No.1: In the Affirmative.

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

REASONS

7. **Point No.1:** Admittedly, this is suit filed by the Plaintiffs against the Defendants for declaration and

injunction. The Defendants appeared through their counsel and got filed the written statements, accordingly. That, my learned predecessors in office have framed the issues and additional issue after filing the written statement. This court has already closed the cross-examination of PW-1 by Defendant Nos.3 to 8 and posted for cross of PW-1 by Defendant No.1. After full cross-examination of PW-1 by Defendant No.1, the case is posted for further evidence of Plaintiff. At this stage the aforesaid application came to be filed by Defendant Nos.3 to 8. The main objection of Defendant No.1 is that, no permission can be granted to cross-examine PW-1 to fill up lacuna and though sufficient time was granted PW-1 was not cross examined. Only because PW-1 was not cross examined earlier cannot be sole ground to refuse recall. The Defendant Nos.3 to 8 intends to cross-examine PW-1 as to their defence. Even otherwise, only because some delay has been caused in proceeding with the suit, a party cannot be deprived from bringing on record the best evidence in support of their case. However, the Defendant Nos.3 to 8 even after affording opportunity are not diligent in conducting the case. If the witness as called for in the application in the form of PW-1 is recalled, no hardship or otherwise would be caused to the Plaintiff and Defendant No.1 by imposing cost. Therefore, the application deserves to be allowed, even though there are no grounds to

allow the application. Accordingly, I answer point No.1 in the Affirmative.

8. **Point No.2:** In view of the above discussions on Point No.1 and for the reasons stated therein, I proceed to pass the following order.

O R D E R

I.A.No.13 filed u/o.XVII Rule 17 r/w.sec.151 of C.P.C by the Defendant Nos.3 to 8 is hereby allowed on cost of Rs.500/-.

PW-1 is recalled for cross-examination by

Senior Civil Judge, Kushtagi.