

COMMON ORDERS ON IA No.27 & 28

IA No.27 is filed under section 151 of CPC by the defendant No.2 to 4 and 11 to 16 to recall the order dated 24.01.2024 and 24.07.2025.

IA No.28 is filed under order 18 Rule 17 R/w/s 151 of CPC by the defendant No.2 to 4 and 11 to 16 to recall PW1 for cross examination by the defendant No.2 to 4 and 11 to 16.

2. Similar affidavits are filed to both the applications and stated that the present suit is filed for partition, declaration and permanent injunction. The defendant No.2 to 4 and 11 to 16 have filed their written statement. On 24.01.2024 the defendant No.17 cross examined the PW1. Thereafter, the case was posted for defendants evidence without providing opportunity to the defendant No.2 to 4 and 11 to 16 to cross examine PW1. Their counsel was absent due to his ill health. The defendant No.13 could not submit anything before the court as he is an illiterate. On the next date of hearing, the PA holder of the plaintiff filed IA under order 23 rule 1 (a) of CPC. In the mean time the plaintiff died and his legal heirs came on record. Therefore, there was no opportunity to cross examine PW1 until 29.08.2025. Therefore, the present applications are filed.

3. The plaintiff has objected the present applications by filing consolidated objections and contended that the PW1 filed his examination in chief in the year 2019. Thereafter,

the defendant No.17 cross examined the PW1. The defendant No.2 to 4 and 11 to 16 failed to cross examine PW1 in spite of grant of sufficient time. Therefore, only this court has taken cross examination of PW1 by the defendant No.2 to 4 and 11 to 16 as nil. In spite of it, the present applications are filed against the actual facts. Therefore, it is prayed to dismiss the present applications.

4. Heard and perused.

5. The point that arises for my consideration is as follows ;

Whether the defendant No.2 to 4 and 11 to 16 have made out sufficient grounds to recall the order dated 24.01.2024 and 24.07.2024 and recall PW1 for cross examination?

6. My answer to the above point is in the **Negative** for the following;

REASONS

7. On perusal of the order sheet, it is evident that on 24.01.2024 this court posted the case for defendants evidence. Before that, the defendant No.17 cross examined the PW1. The defendant No.2 to 4 and 11 to 16 should have cross examined PW1 before cross examination of PW1 by the defendant No.17 as they prior in rank. Moreover, no adverse order is passed against the

defendant No.2 to 4 and 11 to 16 on 24.01.2024. On perusal of the order sheet, it is further evident that on 24.07.2025 time was granted as last chance for defendants evidence. On that day also no adverse order was passed against defendant No.2 to 4 and 11 to 16. On perusal of the deposition of PW1, it is evident that on 25.11.2023 the defendant No.2 to 4 and 11 to 16 have adopted the cross examination of PW1 made on 25.11.2023. Therefore, on perusal of the materials available on record, it is forthcoming that the reasons given to file the present applications are not in accordance with the order sheet averments. Hence, it appears that the defendant No.2 to 4 and 11 to 16 filed present applications casually without verifying the documents. Therefore, there are no reasons to allow the present applications. Accordingly, above point is answered in the **Negative**. Hence, this court proceeds to pass the following:

ORDER

IA No.27 filed under section 151 of CPC is hereby dismissed with costs of Rs.300/-.

IA No.28 filed under Order 18 Rule 17 R/W/S 151 of CPC is hereby dismissed with costs of Rs.300/-.

The defendant No.2 to 4 and 11 to 16 are directed to lead their

evidence without seeking further adjournments

For evidence of defendant No.2 to 4 and 11 to 16.

Call on 15.11.2025

**I-Addl. Senior Civil Judge & JMFC.,
Maddur.**