

Common orders on IA No. 16 and 17

IA No. 16 is filed by the plaintiff under section 151 of CPC to reopen the case for further evidence of plaintiff.

2. IA No. 17 is filed under Order XVI Rule 21 r/w Section 151 of CPC to pass an order to cite the defendant no. 1B as witness of plaintiff.

3. In the affidavits filed to the above applications, it is stated that senior brother of father of the holder of plaintiff purchased 28 guntas of land including 10 guntas of karab from one Mangegowda S/o Veerannagowda through registered sale deed dated 24.04.1949. After advent of RTC, the RTC of purchased property continued in the name of the vendor only. Thereafter, son of MangeGowda by name Honnalage Gowda got created RTC in his name. Thereafter he changed Kata to the name of his wife, who is the defendant no. 1. Then, the defendant no. 1 executed sale deed in favour of defendant no. 2. The defendant no. 1 is no more. His LRs are brought on record as Defendant number 1A to 1F. In order to appreciate that whether the suit property was sold by the grandfather of the legal heirs of the defendant no. 1 and whether that property was belonged to one Lingamma @ Doddathayamma, it is necessary to examine son of the defendant no. 1. Therefore, the present application is filed to permit the plaintiff to examine the defendant no. 1D as plaintiff's witness to

prove the case of the plaintiff. The plaintiffs could not able to trace out the address of the proposed witness as he is residing at Mysore. Hence present applications are filed.

4.The defendant no. 2 filed objection to the both applications and stated that the plaintiff shown to false affidavit to the above applications. He has not made out reasonable grounds to allow the applications. The plaintiff cannot seek this relief as of right. It is only a discretionary power of the Court. In rarest of cases, depending upon circumstances of the court, the court can exercise discretion. The plaintiff wants to examine son of deceased vendor to appreciate whether the suit property was sold by his grandfather and whether the property was belonged to Ningamma @ Doddathayamma. He has no authority in the said aspect. He being plaintiff's close relative wants to assist to lead evidence against his ancestors. The plaintiff himself has answered those points in pleadings as well as in oral evidence. Therefore it is prayed to dismiss the applications filed by the plaintiffs.

5. Heard and perused.

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

Whether the plaintiff has made out sufficient grounds to reopen the case to lead further evidence of plaintiff and to permit him to

examine defendant no. 1D as
plaintiff's witness? ?

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

REASONS

8. The present suit is filed for declaration and consequential relief of cancellation of sale deed and permanent injunction. Both the parties have laid evidence and the case is posted for plaintiff's arguments. At this stage, the above applications are filed. As per the provisions of Order XVI Rule 21 of CPC, party to suit can call opposite party to lead evidence on his behalf as witness. The plaintiff through the present applications intend to examine defendant no. 1D as his witness to appreciate that whether the suit property was sold by his grandfather and whether that property was belonged to Lingamma @ Doddathayamma. On perusal of the materials available on record, it is forthcoming that there are sufficient materials on record and in evidence in respect of the same. It is a well-settled principle of law that case cannot be reopened as a matter of course to fill up lacunas in the evidence adduced by any of the party to the suit. The plaintiff through the proposed witness wants to prove execution of sale deed and right of the vendor. The said facts can be proved by producing documentary evidence. Therefore this Court is of the considered view that there are no sufficient grounds to allow the

above applications. Accordingly, the above point is answered in the “**Negative**”. Hence, this court proceeds to pass the following:

ORDER

IA No. 16 filed under Section 151 of CPC is hereby rejected.

IA No. 17 filed under Order XVI Rule 21, Red Bee Section 151 of CPC is hereby rejected.

For plaintiff arguments

Call on 14.07.2026

(MOHANAKUMARI N.B.)
I-Addl. Senior Civil Judge & JMFC.,
Maddur.