

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC AT PANDAVAPURA

Dated this the 2nd day of April 2025

PRESENT :

SRI.BABU N., B.com, LL.B.
Addl. Senior Civil Judge & JMFC,
Pandavapura.

O.S.No.24/2023

PLAINTIFF : Smt Sunitha.

V/s

DEFENDANTS : Smt Kamala and others.

PARTIES IN I.A.No.V

APPLICANT : Shyamprasad.... 2nd defendant.

V/s

OPPONENT : Smt Sunitha.....Plaintiff.

PARTIES IN I.A.No.VI

APPLICANT : Shyamprasad.... 2nd defendant.

V/s

OPPONENT : Smt Sunitha.....Plaintiff.

COMMON ORDERS ON I.A.No.V FILED
UNDER SECTION 151 OF CPC AND
I.A.NO.VI FILED UNDER ORDER 18 RULE 17
R/W SECTION 151 OF CPC

The defendant No.2 has filed I.A.V under Section 151 of CPC to reopen the case for his further evidence.

2. In the affidavit annexed to the application it is stated that, he was suffering from ill health i.e., cold and fever and hence he could not cross-examine PW-2 to PW-4 and could not give instruction to his counsel and that, he could not cross-examine PW-2 to 4 due to the above said bonafide reasons and hence, the matter is posted for defendants' evidence and that, an opportunity may be given to him to prove his case.

3. The defendant No.2 has filed I.A.No.VI under Order 18 Rule 17 r/w/s 151 of CPC seeking permission to recall PW-2 to 4 for cross-examination.

4. In the affidavit annexed to the application it is stated that, the defendant could not cross-examine PW.2 to 4 on the previous dates as he was suffering from ill health i.e., cold and fever and could not give instructions to his counsel and that, non cross-examination of PW-2 to 4 was due to the above said bonafide reasons and hence the application may be allowed and PW-2 to 4 may be recalled for cross-examination.

5. The above applications are resisted by plaintiff stating that, the defendants have filed the present applications seeking permission to cross-examine PW.2 to 4 when the cross-examination of PW-2 to 4 is taken as Nil and posted the matter for defendants' evidence and that, an opportunity was also given to the defendants to cross-examine PW-2 and inspite of it, the

defendants did not cross-examine PW-2 to 4 and that, reasons assigned by the defendants is not genuine and there are several cases against the defendants in the courts at Pandavapura and that, the defendants have filed the present application to drag on the proceedings and hence, the applications may be rejected.

6. Following points do arise for consideration:-

1. Whether the defendants have made out grounds to recall PW-2 to 4 for cross-examination?
2. What order?

7. Having heard learned Counsel for the respective parties and considered the material on record, I have answered the above points as below:

Point No.1 : In the Affirmative,

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

REASONS

8. POINT NO.1:- In the affidavits annexed to the I.A.No.5 & 6, the 2nd defendant has stated that, he was suffering from ill health i.e., cold and fever when the matter had been listed for cross-examination of PW.2 to 4 and he could not give instructions to his counsel due to which he could not cross-examine PW-2 to 4 and hence, the matter was listed for defendants' evidence. It is the objection raised by the plaintiff that, sufficient opportunity has been given to the defendants to cross-examine PW.2 to 4 and inspite of it, they have not cross-examined them and they have come up with the present application with a malafide intention to drag on the proceedings.

9. A perusal of the order sheet shows that, the suit was pending for cross-examination of PW.1 since 08/04/2024 and was cross-examined on 24/06/2024. Thereafter, the plaintiff lead her further evidence on 22/08/2024 and matter was pending for cross-examination of PW-2 till 06/11/2024. In spite of it, the defendants did not cross-examine PW.2. Hence, the cross-examination of PW-2 was taken as Nil and the matter was posted for defendants evidence on 13/11/2024. In spite of it, the defendants did not come forward to lead defendants' evidence and hence the matter was listed for arguments on 05/12/2024. At that stage, the defendant No.2 came up with I.A.No.3 & 4 to reopen the case for cross-examination of PW.2. The said applications were allowed permitting him to cross-examine PW-2. In spite of it, the defendant No.2 did not cross-examine PW.2. Thereafter, the plaintiff lead her further evidence and examined PW-3 & 4. Therefore once again the matter was listed for cross-examination of PW.2 to 4. Even thereafter the defendants did not come forward to cross-examine PW-2 to 4. Once again the matter was posted for defendants evidence. At this stage, the defendant No.2 has come up with the present application. It appears that, the defendant No.2 is not really willing to cross-examine PW-2 to 4 and he wants to drag on the proceedings. However, the cross-examination is a matter of right. Therefore, one more opportunity may be given to defendants to cross-examine PW-2 to 4. No doubt, it would cause some inconvenience to the plaintiff but the same may be compensated by imposing cost on the defendant No.2. Hence, I answer point No.1 in the Affirmative.

10. **Point No.2:-** Having answered Point No.1 in the Affirmative, I proceed to pass the following :-

ORDER

The I.A.No.V & VI are allowed on cost of Rs.500/- subject to condition that, the defendant No.2 shall cross-examine PW-2 to 4 on the next date of hearing without fail.

For cross-examination of PW-2 to 4,

Call on 07/04/2025.

(Dictated to the Stenographer on computer directly, then corrected and pronounced by me in the open Court on 02.04.2025)

(BABU N.)

Addl. Senior Civil Judge & JMFC,
Pandavapura.

