

07.03.2026

ORDERS ON IA NOS, XIX TO XXI

The counsel for defendant No.1 filed the present applications under section 151 of CPC and under order XVIII rule 17 of CPC R/W section 151 of CPC (two in number) to re-open the case and re-call PW 1 and 2 for the purpose of conducting cross examination by the defendant No.1.

2. In the affidavit annexed to the applications, the defendant No.1 submitted that, the plaintiff filed the present suit for relief of partition and separate possession. The defendant No.1 filed written statement in resisting the case of the plaintiff. Recently the defendant No.1 incorporated additional defence to his written statement by filing amended written statement. He is the only contesting defendant in the present case. On his application the Deputy Tahasildhar was summoned in this case. However, in his absence the cross examination of PW.1 and 2 was taken as nil. The Non-conducting of cross examination of PW.1 and 2 was not intentional, but bonafide. Suppression of material facts by plaintiffs will have to be exhumed by conducting cross examination of PW.1 and 2. In the said pursuit he is prompted to maintain accompanying applications. Hence prays

to allow the applications and to recall PW.1 and 2 for cross examination.

3. The counsel for plaintiff filed common objection to IA No.XIX and XX and the separate objection for IA No.XXI by denying the affidavit averments of defendant No.1.

4. It is contended that, the 1st defendant already filed IA No. IX and X on 08.03.2019 for re-calling PW.1 and 2 for cross examination and also filed IA No. XI and XII for the similar reliefs. Those applications were allowed. In spite of the sufficient opportunity the 1st defendant not cross examined the PW.1 and 2 and the said aspects suppressed by the defendant No.1. Hence he is not entitle for the reliefs claimed. Hence prays to dismiss the application.

5. Heard both side. Perused the materials on record. The plaintiff filed the present suit for relief of partition and separate possession. Perused the entire order sheet and the materials on record. No doubt the defendant No.1 in spite of sufficient opportunity not cross examined the PW.1 and 2 in the early occasions as stated by the plaintiff in their objections. However to provide an opportunity it is necessary to allow the applications subject to

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payment of cost for causing delay in the matter. Therefore, I proceed to pass the following;

ORDER

I.A Nos. XIX to XXI filed by the defendant No.1 Under Section 151 of CPC, U/o XVIII Rule 17 R/w sec. 151 CPC (2 in Nos) are hereby allowed on cost of Rs.500/- each. Pw1 and 2 recalled. For cross of PW.1 and Issue summons to PW2 if PF paid and for orders on IA No.18.

Call on 28.03.2026.

Sd/-

Judge,
Court of Addl.S.C.& MACT
Mysuru