

Orders on IA.No.17 & 18

The defendant No.7 to 12 filed IA.No.17 U/o 18 Rule 17 of C.P.C., and prays to recall PW.1 for the purpose of further cross-examination and filed IA.No.18 U/s 151 of C.P.C., to re-open the case for further cross-examination of PW.1.

2. The application is support by an affidavit sworn to by defendant No.8 by name Karigowda.

3. On the contrary the learned advocate for plaintiff filed separate objections and prays to dismiss the applications.

4. Heard, perused the materials placed on record.

5. The following points arise for my consideration:

1) Whether the IA.No.17 filed U/o 18 Rule 17 R/w Section 151 of C.P.C., and IA.No.18 filed U/s 151 of C.P.C., are deserve to be allowed ?

2) What order ?

6. My answers to the above points are as follows:

Point No.1 : As affirmative.

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

REASONS

7. **Point No.1** :- The learned advocate for defendant No.7 to 12 contended that the plaintiff filed the present suit for partition and separate possession of his share in the suit schedule properties. On 04/12/2019 the case was posted for further cross-examination of PW.1 from the side of defendant No.7 to 12. But, due to oversight it was not noticed that the defendant No.7 to 12 have to further cross-examine PW.1. As such this court was taken as further cross-examination of PW.1 as nil and posted for evidence of defendants. When the counsel for defendant No.7 to 12 gone through the court records it was noticed. The further cross-examination of PW.1 is very much necessary to adjudicate the matter between the parties and to elicit the true facts. Hence, prays to allow the applications.

8. On the other hand the learned advocate for plaintiff contended that the applications filed by the defendant No.7 to 12 are not maintainable either under law or on facts and the same are liable to be dismissed. When the case is posted for evidence of defendants now the defendant No.7 to 12 without leadings their side evidence come up with the present application for further cross-

examination in order to drag the proceedings. Hence prays to dismiss the applications.

9. It is pertinent to note that when we gone through the order sheet dt 04/02/2019 it is clear that as no representation was made from the side of defendant No.7 to 12, this court taken cross-examination of PW.1 as nil and the case is posted for defendant evidence. No doubt, as the defendants remained absent on the particular date and this court has taken cross-examination of PW.1 as nil, but in the int of natural justice and to adjudicate the matter between the parties completely and effectively an opportunity should be given to defendant No.7 to 12. The hardship that would be caused to the plaintiff can be compensated by imposing costs. Hence, I answer Point No.1 as affirmative.

10. Point No.2 :- In view of my findings of point No.1 as affirmative, I proceed to pass the following:

ORDER

IA.No.17 filed U/o 18 Rule 17 R/w
Section 151 of C.P.C., and IA.No.18
filed U/s 151 of C.P.C., are hereby
allowed on payment of cost of Rs.250/-
each.

Call on for payment of cost and
cross-examination of PW.1 by
14/01/2020.

Sd/-
JUDGE,
Addl. Court of Small Causes,
MYSURU.