

Order on I. A.No.XII

The counsel for defendant no.6 has filed present application U/O 18 rule 17 of CPC to re-call the DW-1 for his further cross examinations by defendant no.6.

2. The application is supported by the affidavit of the defendant no.6 and it is sworn that the defendant no.6 has secured some important documents to support his case recently and the said facts has to be questioned to DW-1 by cross examining him. It is further sworn that the further cross examination of DW-1 will certainly throw light on true facts. It is also sworn that if the application is allowed, no hardship will be caused to the other side. Hence prayed to allow the application.

3.The counsel for plaintiff has filed objection to the application and it is stated that the defendant no.6 has filed the present application in order to destroy the admissions already elucidated from DW-1. It is further stated that the DW-1 has filed his affidavit for examination in chief on 04.11.2022 and this court even after granting sufficient opportunities, defendant no.6 did not come forward to cross examine DW-1. It is further stated that the defendant no.6 got every right to give evidence by producing his documents at the time of his evidence. Hence prayed to reject the application with the cost.

4. Heard the arguments of counsel for both parties.

5. The points that arise that consideration of this court are as under;

Point No.1. Whether the defendant no.6 has made out sufficient grounds to re-call DW-1 for his cross examination by defendant no.6 ?

Point No.2. What order ?

6. The findings of this court on above points are as under:

Point No.1 :- In Affirmative

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

REASONS

Point No.1:

7. The defendant no.6 has filed present application to recall DW-1 for his cross examination by defendant no.6. It is stated in the affidavit accompanying to the application that the defendant no.6 now got some documents and he intends to cross examine DW-1. On perusal of the pleading of both parties, the plaintiff has filed suit of the relief of partition and separate possession. The defendant no.1 & 6 have filed their separate written statements. On perusal of the written statement of defendant no.1, he has admitted the plant averments that the suit schedule properties are the joint family properties. On perusal of the written statement of defendant no.6, he has taken up the defence that there was already oral partition between the family members. By considering the defence of defendant no.1 & 6, the defendant no.1 has supported

the pleading of the plaintiff that schedule properties are joint family properties but the defendant no.6 has taken up the contention that there was already partition between the family members. Since the defendant no.1 is sailing with the plaintiff, an opportunity should be given to the defendant no.6 to cross examine DW-1 . More over it is stated in the affidavit accompanying to the application that the defendant no.6 now got some documents to establish his defence by cross examining DW-1. If the application is allowed and DW-1 is recalled for cross examination by defendant no.6, no hardship will be cause to the plaintiff. Hence by considering the reasons assigned in the application, the same deserves to be allowed. Hence for the said reasons this court answers point No.1 in Affirmative.

Point No 2:

8. For the reasons discussed above this court proceeds to pass the following:

ORDER

The application I.A.No.XII filed U/O 18 rule 17 of CPC is here by allowed. Consequently the DW-1 is recalled for his cross examination by defendant no.6.

No order as to cost.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 14th day of June 2023)

(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote