

ORDERS ON I.A. NO.V AND VI

The applicant/defendant has filed the I.A. No.V U/sec.151 of CPC to reopen the case.

The applicant/defendant has also filed another application/I.A. No.VI U/o 18 Rule 17 of CPC to recall PW.1 for cross-examination.

It is stated in the accompanying affidavit that, the plaintiff has filed this suit against the defendants for the relief of partition and separate possession. After issuance of summons, this defendant has appeared before the Court and filed written statement on his behalf. Now the case is posted for plaintiff side arguments. But this defendant could not cross examine PW.1 on his behalf. When the case was posted for cross of PW.1 and for defendant evidence, the counsel for this defendant could not appear before the Court on account of Boycott. Hence, the cross examination of PW.1 was taken as nil. But the cross examination of PW.1 is very essential to disprove the plaintiff's case. If the application is not allowed, the defendant will be put to irreparable loss and inconvenience. On the other hand, if the application is allowed, no hardship or loss would be caused to the other side. Hence, prays to allow the application.

On the other hand, the counsel for plaintiff not filed objections, hence objections to IA No.V and VI taken as not filed.

Heard on IA No.V and VI, and perused the entire records.

The point that arise for my consideration is:

- 1) Whether the applicant/defendant has made out sufficient grounds to allow IA No.V and VI?
- 2) What order?

My findings to the above points are as follows:

Point No.1 : In the Affirmative

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

REASONS

POINT NO.1: The suit is filed by the plaintiff against the defendant for the relief of partition and separate possession in the suit schedule property.

The present application is filed by the applicant/defendant seeking for recall of PW.1 for the purpose of cross-examination.

The suit is filed in the year 2021. When the matter was posted for cross of PW.1, the counsel for defendant present and prays time. But since there are no sufficient reasons assigned the cross of PW.1 was taken as Nil, and the matter was posted for defendant evidence. Then the defendant evidence was also taken as nil and posted the matter for plaintiff side arguments. At this juncture the applicant/defendant has filed the present application seeking recall of PW.1 for the purpose of cross examination. If the

applications are not allowed, the multiplicity of suits and proceedings would have been arise. To avoid the multiplicity proceedings it may not affect any of the party to allow the said applications at this stage. If the applications are not allowed, the sufferer will be one of the party to this suit. Even though the case is posted for plaintiff side argument, in the interest of justice and equity and for proper adjudication of the suit, the said applications are deserves to be allowed on imposing cost. Accordingly I answer Point No.1 in the **Affirmative**.

POINT NO.2: In view of the above discussion, I proceed to pass the following:

ORDER

I.A. No.V and VI filed by the applicant/defendant U/sec.151 of CPC and U/o 18 Rule 17 of CPC are hereby allowed on cost of Rs.750/- payable to TLSA, H.D. Kote.

Accordingly, order of this Court is recalled.

Call on for cross of PW.1 on payment of said cost, call on 11.03.2025

Civil Judge & JMFC.,
Heggadadevanakote.