

KAMS300001112017



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 28th day of April 2025.

OS No.9/2017

Plaintiff: Smt. Parvathamma, W/o Kumara,
R/at No.1782, Giriyabhovipalya,
Mysuru.

-Vs-

Defendants: 1. Mayappabhovi, S/o Late Doddabhovi,
Aged about 73 years,
2. Gowramma, W/o Krishnappa,
D/o Mayappabhovi, Aged about 51 years,
R/at Janatha site No.17, Giriyabhovipalya,
Mysuru.
3. Krishnabhovi, S/o Mayappabhovi,
Aged about 49 years,
4. Ramabhovi, S/o Mayappabhovi,
Aged about 47 years,
5. Narayanabhovi, S/o Mayappabhovi,
Aged about 43 years,
6. Kamma, W/o Swamy, D/o Mayappabhovi,
Aged about 41 years, R/at Kampalapura Post,
Periyapattana Taluk, Mysuru District.

7. Smt.Giriyamma (Dead), W/o Mayappabhovi,
8. Mahadeva @ Madabhovi, S/o Mayappabhovi,
Aged about 39 years,
Defendants No.1, 3 to 5 and 8 are R/at
Emmekopalu Village, Kasaba Hobli, Husnur
Taluk, Mysuru Duistrict.
9. Sujay, S/o Late H.Sannappa, Aged about 48
years, R/at Old KHBC housing borad colony,
near petrol Bank, Hunsur Town, Myusur
District.
10. Smt. Rakshitha W/o Mahadeva, Aged about 24
years, R/at Emmekopalu Village, Kasaba Hobli,
Husnur Taluk, Mysuru Duistrict.
11. Smt.Indira, W/o Ramakrishna,
Aged about 45 years, R/at Mukanahalli
Village, Kasaba Hobli, Hunsur Taluk,
Mysuru District.
12. Smt.Meenakshi, W/o Mahadeva,
Aged about 47 years, R/at K.Yedathore
Palya Village, Kasaba Hobli, H.D.Kote Taluk,
Mysuru District.
13. Smt.Pushpa, W/o Ravinandan,
Aged about 48 years, R/at M.Palya
Village, Doddabyalalu Post, Ravanduru Hobli,
Periyapatna Taluk, Mysuru District.
14. Smt.Sushila, W/o Narayana,
Aged about 40 years, R/at Yemmekoppalu
Village, Kasaba Hobli, Hunsur Taluk,
Mysuru District.
15. Smt.Lakshmi, W/o Krishnabhovi,

Aged about 48 years, R/at Yemmekoppalu Village, Kasaba Hobli, Hunsur Taluk, Mysuru District.

16. Ushakumar, S/o Shivannachar,
Aged about 45 years, R/at Yemmekoppalu Village, Kasaba Hobli, Hunsur Taluk, Mysuru District.

1.	Provision under which the applications are filed	:	Under Section 151 of CPC, under Order 18 Rule 17(a) R/w Section 151 of CPC and under Order 8 Rule 1-A R/w Section 151 of CPC
2.	Relief sought for	:	To reopen the case, to recall DW2 for the purpose of further chief-examination and to condone the delay in production of documents
3.	The date on which the applications are filed	:	17.03.2025
4.	Number of the application	:	IA No.XL, XLI and XLII
5.	The date on which the objections are filed by the opponents	:	01.04.2025
6.	The date on which the orders passed on the said applications	:	26.04.2025

ORDERS PASSED ON I.A.NO.XL, XLI AND XLII

The learned counsel for defendant No.10 filed IA No.XL under Section 151 of CPC to reopen the case for the purpose of

further chief-examination of DW2, filed IA No.XLI under Order 18 Rule 17 R/w Section 151 of CPC to recall DW2 for the aforesaid purpose and also filed IA No.XLII under Order 8 Rule 1-A R/w Section 151 of CPC to condone the delay in production of the documents.

2. All the applications are supported with the affidavits of defendant No.10. In the affidavits it is stated that, in order to lead further evidence on her behalf the production of documents is very much necessary. She is now producing the documents along with the applications and the said documents are very much necessary to prove her case. If the applications are not allowed she will be put to great hardship, on the other-hand if the same are allowed no hardship is going to be caused to the other side. Hence, prayed to allow the applications.

3. On the other-hand the learned counsel for the plaintiff filed separate objections contending that, the applications are not maintainable under law or on facts and the contents of both the applications are one and the same. It is also contended that, now the 10th defendant has created the documents in respect of suit schedule item No.3 property and mutated it into her name. Already 10th defendant has been examined and fully cross examined and now by producing created documents she wants to delay the proceedings which are not at all tenable under law. Already the evidence of 10th

defendant has been concluded about 3 years back and in order to delay the proceedings the applications are filed and prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and the defendants and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the 10th defendant has made out sufficient grounds to reopen the case, to recall DW2 for the purpose of further chief-examination and to condone the delay in production of documents?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

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

REASONS

6. **Point No.1:** This is the suit filed by the plaintiff against the defendants seeking the relief of partition and separate possession of her legitimate share over the suit schedule properties. The defendants have appeared before the court and filed their written statement. The issues have been framed on 16.07.2018. Initially the plaintiff got examined

herself as PW1. Since, she failed to appear before the court for cross examination her evidence has been discarded and later the SPA holder of the plaintiff by name Nanjudaswamy who is none other -than the son of the plaintiff examined as PW2 and got marked 91 documents as per Ex.P1 to Ex.P91.

7. Further, the 9th defendant examined himself as DW1. Further, the 10th defendant has been examined as DW2 and her evidence was completed on 16.04.2022. Thereafter, the 3rd defendant has been examined as DW3 and his evidence has been completed on 04.02.2025. The deed writer by name K.S.Beersha has been examined as DW4. When the case has been posted for further chief of DW4, these applications came to be filed to reopen and to recall DW2 for the further purpose of further chief examination and to produce documents. In the applications the learned counsel for the 10th defendant stated that the said documents are very much necessary to prove the case. The learned counsel for the plaintiff filed the objections contending that the documents are created one. It is the settled principles of law that, mere production and marking of the documents will not be sufficient towards the proof the said documents. If those documents are marked definitely the plaintiff will get an opportunity to further cross examine DW2. If the applications are not allowed it will lead to multiplicity of proceedings. The further evidence of DW2 may enable this court to come to a just conclusion. Admittedly, there is delay

in production of the documents which could be compensated by imposing costs. Hence, this court comes to the conclusion that, the 10th defendant has made out sufficient grounds to reopen the case, to recall DW2 for the purpose of further chief examination and to condone the delay in production of the documents. Hence, Point No.1 is answered in the Affirmative.

8. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

IA No.XL filed under Section 151 of CPC, IA No.XLI filed under Order 18 Rule 17 R/w Section 151 of CPC and IA No.XLII filed under Order 8 Rule 1-A R/w Section 151 of CPC filed by the 10th defendant are hereby allowed with costs of Rs.300/- each.

Accordingly, the case is reopened and DW2 is hereby recalled for the purpose of further chief-examination and the documents are received subject to payment of costs.

(Dictated to the Stenographer directly on the computer, same is corrected and pronounced by me in the open court on this the 28th day of April 2025.)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.