

KAMS300012302020



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC AT HUNSUR**

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

Dated this the 13th day of January, 2025.

OS No.143/2020

Plaintiffs: 1. Smt.Sundramma, W/o Late Thimmegowda,
Aged 65 years,
2. Sri.H.T.Bhaskar, S/o Late Thimmegowda,
Aged 47 years,
Both are residing at Mardurhosur village,
Kasaba Hobli, Hunsur Taluk.

-Vs-

Respondents: 1. Smt.Rajamma, W/o Late Shivanna,
Aged 70 years,
2. Kemparajegowda, S/o Late Shivanna,
Aged 53 years,
3. Rajakumara, S/o Late Shivanna,
Aged 49 years,
All are residing at Mardurhosur village,
Kasaba Hobli, Hunsur Taluk.
4. Ramegowda, S/o Late Shivanna,
Aged 51 years, R/at No.3362/19,
Maruthi Badavane, Behind the college,
Hunsur City.

5. Kousalya, W/o Chandregowda,
Aged 50 years, R/at Undawadi village,
Mullur Post, Gavadagere Hobli,
Hunsur Taluk.
6. Janakamma, W/o Late Chandregowda,
Aged 68 years,
7. Eregowda, S/o Late Chandregowda,
8. Devarajegowda, S/o Late Chandregowda,
Aged 46 years,

All are residing at Mardur Hosur village,
Kasaba Hobli, Hunsur Taluk,
9. Sujatha, W/o Revanna, Aged 42 years,
R/at Nilavagilu village, Kasaba Hobli,
Hunsur Taluk,
10. Revanna, S/o Late Chandregowda,
Aged 50 years,
11. Mallesha, S/o Late Chandregowda,
Aged 48 years,

Both are residing at Nilavagilu village,
kasaba Hobli, Hunsur Taluk.

1.	Provision under which the applications are filed	:	Under Section 151 of CPC and under Order 18 Rule 17 R/w Section 151 of IPC
2.	Relief sought for	:	Reopen the case and to recall PW1 and to recall DW1
3.	The date on which the applications are filed	:	04.11.2024
4.	Number of the applications	:	IA No.XXII and IA No.XXIII

5.	The date on which the objection is filed by opponent :	16.11.2024
6.	The date on which the orders passed on the said applications :	13.01.2025

ORDERS PASSED ON IA NO.XXII and XXIII

When the case is posted for plaintiff side arguments, the learned counsel for defendants No.1 to 3, 6 to 11 filed IA No.XXII under Section 151 of CPC to reopen the case and to recall PW1 and DW1 and they have also filed I.A. No.XXIII under Order 18 Rule 17 R/w Section 151 of CPC to recall PW1 and DW1 for the purpose of further cross-examination and further chief-examination.

2. Both the applications are supported with the affidavits of the 7th defendant wherein he has stated that, the plaintiffs filed the suit against defendants for the relief of partition and separate possession of the suit schedule property. The case is now posted for plaintiff side arguments and on the last date of hearing he was unable to produce the documents due to misplace of those documents. Now he is ready to produce the documents to prove his case. He is ready to tender himself to give the evidence. The reasons assigned are bonafide and not intentional. If the applications are not allowed they will be put to great hardship and inconvenience. On the other-hand no hardship is going to be caused to the plaintiffs. Hence, prayed to allow the applications.

3. On the other-hand the learned counsel for the plaintiffs filed common objection contending that, the applications are not maintainable under law or on facts. The applications are filed when the case is posted for arguments in order to delay the proceedings. There is no reasons assigned by the defendants why they want to recall PW1 for the purpose of further cross-examination. The defendants have not mentioned about the documents to be produced. It is also contended that, the entire cross-examination of PW1 was over. The present applications are filed to drag on the proceedings. Hence, prayed to reject both the applications with heavy costs.

4. Thereafter, heard arguments addressed by learned counsels for both side 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 defendants No.1 to 3, 6 to 11 have made out sufficient grounds to reopen the case and to recall PW1 for the purpose of further cross-examination and DW1 for the purpose of further chief-examination ?
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:** The plaintiffs have filed the suit against the defendants seeking the relief of partition and separate possession of their ½ share over the suit schedule properties. It is the specific case of the plaintiffs that, the plaintiffs and the defendants are family members and they are having ½ share over the suit schedule properties. Defendant No.5 filed written statement. Already the issues have been framed on 11.11.2021. The 2nd plaintiff got examined himself as PW1 and got marked documents as per Ex.P1 to Ex.P84. The plaintiff also got examined two witnesses by name Dhasharatha and Nagarjegowda as PW2 and PW3. On the other-hand the 7th defendant got examined as DW1 and got marked totally 33 documents as per Ex.D1 to Ex.D33. On the earlier occasion when the case was posted for arguments the learned counsel for the plaintiffs filed applications to reopen the case and to recall PW1. The said applications came to be allowed and PW1 got marked additional documents. Thereafter, again the case was posted for arguments and these applications came to be filed by counsel for defendants No.1 to 3, 6 to 11.

7. As per the defendants there are some documents to be marked and it is necessary to further cross-examine PW1. The plaintiffs have filed objection contending that, no proper grounds have been made out. If PW1 is recalled for the purpose of further cross-examination no hardship is going to

be caused to the plaintiffs. If DW1 is recalled and some more documents are marked definitely the plaintiffs will get an opportunity for further cross-examine PW1. Therefore, this court comes to conclusion that, the defendants have made out sufficient grounds to reopen the case and to recall PW1 and DW1 for the aforesaid purposes. Accordingly, 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.XXII filed under Section 151 of CPC and IA No.XXIII filed under Order 18 Rule 17 R/w Section 151 of CPC by defendants No.1 to 3, 6 to 11 are hereby allowed with costs of Rs.300/- each.

Accordingly, the case is reopened and PW1 is hereby recalled for the purpose of further cross-examination and DW1 is hereby recalled for the purpose of further chief-examination subject to payment of costs.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 13th day of January, 2025.)

(Anitha)

Addl. Senior Civil Judge and JMFC.,
Hunsur.