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**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 15th day of October 2024.

OS No.117/2016

Petitioner: Smt.A.K.Geethakumari,
D/o Late B.Kempegowda,
W/o Sri.Ramakrishnegowda,
Aged 50 years, R/at Door No.265,
Opposite Mini Vidhana Soudha,
Vidyanagara, H.D.Kote Town,
Mysuru District.

-Vs-

Defendants: 1. Kendagannegowda, S/o Late B.Kempegowda,
Aged about 55 years,
2. Sri.K.Santharaju,S/o Late B.Kempegowda,
Aged about 53 years,
3. Sri.Kumar @ Vinayakumargowda,
S/o K.Santhaaju,
Aged about 25 years,

Defendants No.1 to 3 are residing
at Aswalu village, Bilikere Hobli,
Hunsur Taluk, Mysore District.

1.	Provision under which the applications are filed	:	Under Section 151 of CPC
2.	Relief sought for	:	Seeking permission to cross-examine DW2
3.	The date on which the applications are filed	:	12.09.2024
4.	Number of the applications	:	IA No.XVIII
5.	The date on which the objections are filed by different opponents	:	01.10.2024
6.	The date on which the orders passed on the said applications	:	15.10.2024

ORDERS PASSED ON IA NO.XVIII

The learned counsel for the 1st defendant filed IA No.XVIII under Section 151 of CPC to permit the 1st defendant to cross-examine DW2.

2. The application is supported with the affidavit of the 1st defendant wherein it is stated that, the plaintiff filed the suit against himself and others for partition and separate possession. He is contesting defendant in the suit and filed the written statement against the plaintiff and defendants No.2 and 3. He has been cross-examined by the 2nd defendant and by seeking permission he wants to examine DW2. If the application is not allowed great hardship would be caused to the 1st defendant. On the other-hand no injury would be caused to the other side. Hence, prayed to allow the application.

3. The learned counsel for the 2nd defendant filed the objection contending that, the application is not maintainable under law or on facts. The 2nd defendant further contended that, the plaintiff and the 1st defendant by colluding with each other filed the suit in order to grab the improved properties of the 2nd defendant. If at all there is no collusion between plaintiff and the 1st defendant then the 1st defendant should have examined DW2 before the plaintiff. Since, the cross-examination of DW2 was over by the plaintiff this application is filed to cause mental harassment to the 2nd defendant. It is also contended that, the 1st defendant at page No.13 and in the chief-examination affidavit para No.11 stated that, the plaintiff has already given her share in the year 1986 and MR. No.4/90-90 has been mutated. During the life-time of B.Kempegowda he had executed a registered Will and on the basis of said Will the properties have been mutated in the name of defendants No.1 to 3 and they are in possession of their respective properties and in order to fill up the lacuna this application is filed and prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for defendants No.1 and 2 and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the point that arise for consideration are as hereunder:

POINTS

1. Whether the 1st defendant has made out sufficient grounds to permit him to cross-examine DW2?
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 the plaintiff against the defendants seeking the relief of partition and separate possession of her legitimate share over the schedule properties. It is an admitted fact that, the plaintiff is the sister of defendants No.1 and 2. The 3rd defendant is the son of 2nd defendant. As per the plaintiff the suit schedule properties are joint family properties of herself and defendants No.1 and 2 and her demand for share has been refused by defendants No.1 and 2. Already the defendants have filed the written statement and issues have been framed. In order to prove the case the plaintiff examined herself as PW1 and got marked 69 documents as per Ex.P1 to Ex.P69. On the other hand the 1st defendant stepped into the witness box and examined himself as DW1. Further, the 2nd defendant stepped into witness box and examined himself as DW2. They have got marked the documents as per Ex.D1 to Ex.D97. It is pertinent to note that,

the counsel for the plaintiff cross-examined DW2 on 03.06.2024, 24.06.2024 and 28.08.2024 and when the case was posted for further evidence of the 2nd defendant, the 1st defendant filed this application.

7. It is specifically alleged that, the 1st defendant filed separate written statement and he is contesting the suit and he has filed the written statement against the claim of the plaintiff. On the other-hand the learned counsel for the 2nd defendant argued that, the plaintiff and the 1st defendant colluded together and as per the Will the properties have been allotted to defendants No.1 and 2 and the 2nd defendant improved his properties and in order to hatch it the 1st defendant colluded with the plaintiff managed to file the suit. It is to be noted that, at the time of the addressing the arguments the learned counsel for the 2nd defendant argued that, with the permission of the court before cross-examination by the plaintiff, he has cross-examined the 1st defendant. It is further argued that, if at all the 1st defendant wanted to cross-examine DW2 then he should have sought leave of the court before cross-examination of DW2 by the plaintiff. Admittedly, the said act has not been done by the 1st defendant. Already the 2nd defendant has been cross-examined by the plaintiff. In the written statement at para No.13 the 1st defendant put-forth his specific defence. As per the 2nd defendant there is a Will executed by their father which has been acted upon, whereas

the 1st defendant stated that, there is already a Panchayath Palu Parikath dated 19.07.2010 and it is to be now acted upon. Admittedly, the 1st defendant and 2nd defendant filed separate written statement. Nowhere in the written statement it appears that, the 1st defendant is supporting the case of the plaintiff. Therefore, he has to be given an opportunity to cross-examine DW2. The written statement of defendants No.1 and 2 are entirely different from the case of the plaintiff. If an opportunity is given to the 1st defendant to cross-examine the 2nd defendant about the Will and other defences it will not curtail the right of the 2nd defendant. It is to be borne in mind that, the plaintiff is before the court seeking partition against both defendants No.1 and 2 who are her brothers. The court is to decide that, whether the plaintiff is having any share over the suit schedule properties or not. The 2nd defendant put-forth the Will whereas the 1st defendant put-forth the Panchayath Palu Parikath which is against the case of the plaintiff. Therefore, no hardship is going to be caused to the 2nd defendant if the application is allowed. 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.XVIII filed by the 1st defendant under Section 151 of CPC is hereby allowed with costs of Rs.300/-.

Accordingly, the 1st defendant to permitted to his cross-examine DW2 only with regard to his defences taken up in the written statement 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 15th day of October, 2024)

(Anitha)

Addl. Senior Civil Judge and JMFC,
Hunsur.