

ORDERS ON IA No.XIX and XX

The Counsel for Plaintiff filed IA No.XIX Under Section 151 of CPC for reopen the case and the IA No.XX Under Order 18 Rule 17 R/w Section 151 of CPC and prays for recall the DW-1 to 4 for further cross of DW-1 and 2 and cross of DW-3 and 4.

2. In the accompanying affidavits enclosed to IA Nos.XIX and XX, the plaintiff has stated that, he filed suit against the defendants for the relief of specific performance of contract to enforce the agreement dated 26.08.2014.

3. Further he has stated that, his previous counsel is not cross examine the DW-1 and 2 on that point and the case was set down on last date of hearing for cross of DW-3 and 4. The last date of hearing, he was not engaged counsel and at that time he prays time to cross examination of DW-3 and 4. But, this court rejected his prayer and passed an order of cross examination of DW-3 and 4 taken as nil and posted the case for argument. Hence, it is very much required to prove his defence. The non-further examination of DW-1 and 2 and cross of DW-3 and 4 on the last days is not an intentional one. If the application is not allowed, he will be put to hardship, if the application is allowed no prejudice will be caused to the other side. Hence, he pray for allow the application.

4. On the other the defendants have filed objection to IA No.XIX and XX, in the objection statement contended that,

the application filed by the plaintiff is not maintainable and the plaintiff has not assigned any specific reason in the affidavit. Further stated that, the present application filed by the plaintiff is only intention to drag on the court proceedings. Accordingly pray for reject the application.

5. Heard arguments.

6. Perused record, it could be seen that, the plaintiff filed the suit of specific performance of contract to enforce the suit agreement dated 26.08.2016.

7. On the other hand, the defendants contended that, the suit schedule property is ancestral property of defendants and defendant No.1 and 2 have not right to execute the sale agreement in favour of plaintiff.

8. On the basic of rival pleadings of the parties this court framed issues and posted for trial. Further, the record shows that, the both parties have lead evidence and case posted for arguments on merits at this stage, the present application was filed.

9. The order 18 Rule 17 of CPC., provides that, the court may at any stage suit recall any witnesses who has been examined and may put such questions to him as the court things fit.

10. It is well settled Rule 17 of CPC., enables court to clarify doubts regarding evidence led by the parties. It does not enable filing up off omissions or lacuna in the evidence recorded power conferred. On the court can be used suo-moto or an

application of the parties but, as to be used sparingly in appropriate cases.

11. In the present case on hand, the plaintiff has intended to further cross examine the DW-1 and 2 and cross examine the DW-3 and 4. Admittedly, the defendant No.3 and 4 have not yet been cross examined by the plaintiff.

12. Moreover, it is not proper to curtail the parties from producing respective evidence on technical grounds. Therefore, this court is of the opinion that it is just and necessary to recall the DW-1 to 4 in order to cross examination. However, on perusal of order sheet this court it is noticed that, he caused delay by filing this application for that the plaintiff has to compensate by way of cost to the defendants. Hence, keeping in view of the facts and circumstances of the case, the applications filed by the plaintiff are allowed on cost of Rs.1,000/-. Hence, DW-1 to 4 are recalled.

13. For further cross examination of DW-1 and 2 and for cross examination of DW-3 and 4.

Call on: 19.02.2025.

**Sr. Civil Judge and JMFC,
K.R.Nagar.**