

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 9th day of September 2021

O.S.No.26/2014

Plaintiff/s : J. Shashirekha and another

-V/s-

Defendant/s : J. Suresh and others

Two I.A.'s dated 07/09/2021

Applicant/s : P. Shobha
.... Defendant No.6
transposed from plaintiff No.3

-V/s-

Opponent/s : J. Shashirekha and another
... Plaintiffs

**ORDERS ON TWO I.A.s DATED 07/09/2021 UNDER
ORDER 18 RULE 17 R/W SECTION 151 OF CPC AND
SECTION 151 OF CPC**

The defendant No.6 (who transposed from Plaintiff No.3) filed these applications to recall the PW1 and to permit to cross examine PW1 by recalling the Order dated 24.08.2021.

2. The defendant No.4 and 5 filed objections.

3. Heard. Perused the pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the leave to cross examine the PW1 can be granted to defendant No.6 ?
2. Whether the recalling of Order dated 24.08.2021 is proper under law ?
3. What order ?

5. The above points are answered as follows :-

Point No.1 & 2 : In the Negative

Point No.3 : As per final order for the following:-

REASONS

6. **Point No.1 & 2** :- These two points are inter connected and inter dependant, for which these two points are taken up together for avoiding repetition and for the purpose of brevity.

7. On 24.08.2021 this Court rejected the prayer of the defendant No.6 (who was transposed from plaintiff No.3) to permit her to cross examine the PW1. Therefore, these applications are specifically filed by the applicant to recall the said order and to permit the cross examination of PW1.

8. It is a matter on record that this Court while passing Order on I.A. dated 04.12.2017, permitted the 3rd plaintiff to transpose as 6th defendant, subject to condition that the 2nd copy of original plaint (excluding its contents such as signatures etc. of plaintiff No.1 and 2) shall be considered as the written statement of transposed 6th defendant and hence, no fresh written statement of the 6th defendant would be permissible to be filed. In this regard,

this Court has relied upon the decision reported in AIR 2003 KAR 348 (Veerabhadrapa Vs. Gangamma). Thus, for the detailed reasons stated in the said Order, the 6th defendant is precluded from filing separate written statement. In spite of it the 6th defendant filed separate written statement on the next hearing date viz.02.07.2019, without seeking any leave of the Court. The same was objected by the defendant No.4 and 5 and by considering the same on 08.08.2019 this Court expunged by holding it to be adduce of process and also imposed fine Rs.5,000/- payable to T.L.S.C., Nanjangud.

9. On 30.08.2019 an application u/s 151 CPC was filed to recall the Order dated 08.08.2019 and another I.A. u/o 8 rule 9 CPC was filed to receive the additional W.S. of defendant No.6. The same was dismissed by Orders dated 23.10.2019, for the detailed reasons stated therein. This Court has observed about the ratio in the decision reported in 2012 (8) SCC 148 (Union of India Vs. Ibrahim Uddin)

wherein it is held that no party can plead evidence on any issue/point not raised in the pleadings and in case, such evidence has been adduced, it is just to be ignored.

10. Keeping these facts on record at the backdrop, the present prayer has to be considered. In the decision reported ILR 2010 KAR 4122 (P. Sathish Pai Vs. B. Yeshwanth Shenoi) it is observed that right of cross examination is permitted to the extent of clash of interest between the parties. Similarly, in the decision reported in 2008 (2) CTC 573 (Vijaya Vs. Saraswathi) it is observed as follows:

“Only if there is conflicting interest, an opportunity should be given to permit cross examination”

11. In the Order dated 20.06.2019 this Court permitted the transposing the 3rd plaintiff to the position of defendant No.6, not because they have conflict of interest, but because they have drifted away and do not wish to sail together. However, it is specifically noted that the

withdrawal of pleading is not permissible for the 3rd plaintiff, even after transposing as 6th defendant. When the fact remains thus, when the plaintiff deposed evidence on the basis of plaint recitals and the 6th defendant's pleadings is duplicate copy of the plaint itself, there is no conflict of interest in the pleadings of the plaintiff No.1 and 2 vis-a-vis the pleadings of transposed defendant No.6. Therefore, when a party cannot travel beyond the pleading to adduce evidence, there is no valid ground to permit the cross examination of a party, by another party who does not have any conflict of interest in the pleadings, as against such witness. Therefore, the Order dated 24.08.2021 is proper and correct even on reconsideration for the reasons stated supra. Hence, the said Order does not require to be recalled. Hence, opportunity to the 6th defendant to cross examine the PW1 cannot be granted. Therefore, point No.1 and 2 are answered in the negative.

12. **Point No.3:-** In view of the findings on the points supra, this Court proceeds to pass the following:

ORDER

Two I.As dated 07.09.2021 filed by the defedant No.6, who is transposed from plaintiff No.3, under Order 18 Rule 17 r/w Section. 151 of CPC and I.A u/s 151 of CPC are hereby dismissed with cost Rs.100/- each.

Refusal to Permit the cross examination of PW1 by the defendant No.6 is confirmed.

The prayer to recall the Order dated 24.08.2021 and to recall the PW1 are rejected.

(Dictated to the typist directly on the computer, corrected, initialed and then pronounced by me in open Court on this the 9th day of September 2021).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.