

COMMON ORDERS ON I.A.NO.3 AND 4
Filed BY THE DEFENDANTS

The Plaintiffs have filed this suit against the defendants for the relief of partition and separate possession. When the matter is set down for Arguments, the defendants have filed these applications seeking re-open the case and recall PW1 for cross examination.

2. In the Affidavit in support of applications, the 1st defendant has stated that, due to his ill health he was unable to give proper instructions to his counsel to cross examine PW-1. Hence, it is just and necessary to reopen the stage and recall PW1 for cross examination. If the applications are allowed, no prejudice would be caused to the plaintiffs. Accordingly, he prayed to allow the applications.

3. After receipt of applications, the learned Counsel for plaintiffs has filed objection by contending that, applications are not maintainable in law and on facts. He further contended that, the reasons for re-opening is not convincing and the defendant was not diligent in conducting this case. Further in order to protract the proceedings, the defendants have filed this frivolous applications, sufficient opportunity already granted and no grounds are made out. Hence, he sought for rejection of application with cost.

4. For disposal of applications, the following points arise for consideration:-

1. Whether the defendants have made out sufficient grounds to allow the applications?

2. What Order?

5. Both side have argued in par with their pleadings. Having heard arguments on both side, my findings to above points are:-

Point No.1 : In the ***Affirmative***

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

REASONS

6. **POINT NO.1**:-The defendants have filed these applications to permit them to cross examine PW1 by re-opening the stage. It is settled principle of law that, both side must be permitted to produce the best evidence available to them. At the same time, ample opportunity must be provided to both side to prove their case. If the applications are allowed, no hardship or injury could be caused to the plaintiffs.

Though, the plaintiffs would be put to inconvenience same can be compensated by imposing suitable costs. On the other hand, if it is rejected, the defendants will suffer greater injury as they would not be in a position to establish their defence.

7. Order XVIII Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. Ultimately the court has to find out the truth in the matter and for that purpose if any additional opportunity by way of recall has to be granted, in the interest of justice and with a view to find out the truth, the court can exercise discretionary power under section 151 of CPC. The Court can in such an event can expedite the hearing of the suit and hear the arguments of the parties day to day. The other party can be also compensated in terms of payment of exemplary costs. Therefore, there are sufficient grounds to re-call and re-open the case and permit the defendants to cross examine Pw-1. Accordingly, point No.1 is answered in the ***Affirmative.***

8. **POINT NO.2:-** On perusal of order sheet, it is observed that inspite of sufficient opportunity the defendants have not avail the opportunity and failed to cross examine PW1. Therefore, defendants can be permitted to adduce evidence by re-open the stage and sufficient cost must be imposed to discourage the defendants from seeking indefinite adjournments and to compensate the inconvenience suffered by the plaintiffs. In the facts and circumstances of the case, it is deem fit to impose a cost of Rs.500/- on the defendants. Accordingly, in the light of above discussion this Court proceed to pass the following:-

ORDER

I.A.No.3 and 4 filed by
defendants U/s.151 of C.P.C. and
U/O.XVIII Rule 17 of C.P.C. are
allowed on cost of Rs.500/- and
stage is re-opened and PW1 is
recalled for cross examination.

For cost and cross of PW1.

Call on. 16/01/2025.

Prl. Civil Judge & JMFC.,
Nanjanagudu.