

**ORDERS ON I.A.NO.XII & XIII**

At the stage of defendant evidence these I.A.No.XII & XIII filed by the applicant/defendant No.2 under section 151 of C.P.C and under Order 18 Rule 17 of C.P.C, seeking to re-open the case and re-call the P.W-1 from the stage of defendant evidence to further cross examination of P.W-1.

2. In the I.A.No.XII & XIII, it is stated for the reasons mentioned in the accompanying affidavits that, the plaintiffs have filed the suit for the relief of permanent injunction. At the time of cross examination of P.W-1 he has forgot to pose some important questions. Hence, it is necessary to re-call the P.W-1 for the purpose of further cross examination in order to disprove the case of the plaintiffs. If the permission is not granted as prayed in I.A.No.XII & XIII, great hardship will be caused to him. Accordingly, he has prayed to allow the I.A.No.XII & XIII.

3. On the other hand, the plaintiffs have filed objection and contended that, I.As. filed by the defendant No.2 are not maintainable under law and on facts. The counsel for defendant No.2 has took lot of time to cross examine the P.W-1 and at length cross examined him. The defendant No.2 has to lead evidence to rebut the documentary and oral evidence produced by the plaintiff, but not by putting untenable questions in cross examination. The suit is filed in the year

2015 till now the defendant No.2 was doing for ascertaining additional facts as revealed in his affidavit. No valid reasons are forth coming in his affidavit. The cross examination of P.W-1 by the council for the defendant No.3 has exhausted all his defense including the defense taken up by the defendant No.2, while so what is the propriety of recalling P.W-1 for further cross examination. It may be the intention of the defendant No.2 to fill up the lacunas in his evidence to recall P.W-1 nothing else. None of the defendants have produced any documentary evidence for establishing title over the suit schedule property of the plaintiffs so as to rebut the documentary evidence produce by the plaintiff No.1 & 2 except to harass the plaintiffs without getting relief and to knock off their site property. Hence, prays to dismissal of above applications with cost.

4. Heard both sides and perused the materials available on record.

5. In this case, I have completely gone through the entire suit file. This is the suit filed by the plaintiff for the relief of permanent injunction. In this case, already the evidence of the plaintiff's side has been completed and posted for defendant evidence. When the case has been posted for defendant evidence, the applicant/defendant No.2 has come up with these I.A.No.XII & XIII with a prayer to re-open the

case and re-call the P.W-1 for the purpose of further cross examination of P.W-1.

6. After careful perusal of the entire case file and also after hearing the both sides on these I.As., I have also perused the specific provision of Rule 17 of Order XVIII of C.P.C. which states that, "*the Court may at any stage of the suit recall any witness who has been examined*". As per the above provision, the Court may permit the party to re-call his witness for further examination at any stage of the suit that includes even at the stage of argument. However, it is the discretionary power of the Court. The defendant No.2 intend to pose some important questions to P.W-1 as alleged in I.As. Therefore, this court of the opinion that, the burden is on the defendants to disprove this case as this is the suit filed by the plaintiffs for the relief of permanent injunction. Hence, the sufficient opportunities are to be given to the defendants in this case. Thus, in the ends of justice and equity and also for the proper adjudication of the case and also in order to avoid the multiplicity of proceedings, if these I.As. are allowed, no hardship will be caused to the opponents/plaintiffs. Hence, I proceed to pass the following:-

**:: O R D E R ::**

The I.A.No.XII & XIII filed by the applicant/defendant No.2 under section 151 of C.P.C and under Order 18 Rule 17 of

C.P.C respectively are hereby **allowed on cost of Rs.500/- each.**

The case is re-opened and P.W-1 is re-called.

For further cross examination of P.W-1.

Call on: 06.08.2024.

**Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.\*\***