

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,

Senior Civil Judge & JMFC, Devadurga.

O.S.No.4/2017

DATED : THIS THE 6th DAY OF APRIL 2024.

Plaintiffs: 1. Lingamma @ Siddalingamma W/o. Govindaraj
and another.

(By Sri.B.S., Advocate)

--V/s--

Defendants:1. Yallanagouda S/o. Late Naganagouda.

(By Sri.A.T.B., Advocate)

Provision under which the application is filed	U/o.XVIII Rule 17 R/w.151 of CPC.
Relief sought for	To permit to cross of P.W.2.
The date on which the application is filed	12.03.2024.
Number of the application	IA No.XIII.

The date on which the objections are filed by different opponent	20.03.2024.
The date on which the orders were passed on the said application	06.04.2024

**Senior Civil Judge & JMFC.,
Devadurga.**

ORDER ON IA NO.XIII

The present suit is for declaration, partition, rectification of the records of the suit property and for permanent injunction.

2. The present application has been filed by the plaintiffs to permit them to tender PW2 for cross- examination. Plaintiff no.2 in his affidavit filed accompanying the application submits that due to unavoidable circumstances he could not attend the court. In this circumstance, this court took his cross-examination as not tendered. In this regard, the plaintiffs pray as above.

3. The defendants in their objections contended that the present application is not maintainable. The plaintiffs sought two reliefs in the same application. PW2 remained absent for 5 times. No reasons are assigned to recall PW2. The plaintiffs are in the habit of protracting the proceedings. In this regard, defendants pray to reject the application.

4. Heard arguments of both counsel.

5. Considering the case of the parties following points arise for my consideration;

1. Whether plaintiffs has made out a case to permit PW2 to face cross-examination?
2. What order?

6. My finding for the above points are as follows

Point No.1	:	In the affirmative,
Point No.2	:	As per final order for the following;

R E A S O N S

7. **Point No.1:-** It is the case of the plaintiffs due to unavoidable circumstances PW2 could not attend the court to face cross- examination. As such his evidence was taken as not tendered for cross-examination.

8. In this regard, I have perused the materials available on record. The present suit is one for partition, declaration and permanent injunction. Be it stated, considering the application on hand I am of the view that the right of the plaintiffs to put forth their case and substantiate it cannot be curtailed as the same amounts to curtailing the rights of the plaintiffs to put forth their grievances against the defendants. Considering, the application

and the objection, I am of the further view that to extract the truth it is necessary that PW2 be put to cross-examination. Further, if PW2 is permitted to face cross-examination, no harm will be caused to the defendants. This being the case, if opportunity is accorded to PW2 to face cross-examination, the same will meet the ends of justice.

9. Be it noted, the defendants contended that the plaintiffs sought two reliefs in the same application, which is not permissible. In this back ground, I have perused the application. In the application plaintiffs sought for setting aside of the order dated:14.02.2024 and permit PW2 to face cross-examination. It is germane to note that the above said two reliefs are complimentary to each other. The later relief is consequential to the former relief. Thus, they cannot be said to be two separate reliefs. This being the case, the contention of the defendants cannot be accepted.

10. Be it stated, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below;

"The rules of procedure are made to advance the cause of justice and not to

defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress".

In view of the law on hand and considering the circumstances of the present case, I am of the view that there is no impediment to allow PW2 to face cross-examination by the defendants.

11. It is to be considered that if the present application is not allowed the plaintiffs cannot substantiate their case and hence the inconvenience which may be caused to them is more than the inconvenience which may be caused to the defendants, if the application is not allowed. Further, if the application is not allowed the injury which may be caused to the plaintiffs cannot be compensated at any cost, on the other hand the defendants have the opportunity to contest the matter and get the same decided on merits. As such, considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no.1 in the affirmative.

12. **Point No.2:** -In view of reasons on point No.1, I proceed to pass the following;

O R D E R

IA No.13 filed by the plaintiffs is hereby allowed on cost of Rs.500/-.

PW-2 is permitted to face cross-examination by the defendants.

(Dictated to the Stenographer directly on the computer, typed by him corrected by me and then pronounced in the open court on this the 6th day of April 2024).

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.