

ORDERS ON I.A DATED 02.03.2021
FILED BY THE DEFENDANT NO.3
U/O 18 RULE 17 OF CPC

The counsel for defendant No.3 has filed I.A U/o 18 Rule 17 r/w Sec.151 of CPC praying to recall the DW.1 for cross examination.

2. In the accompanied affidavit, the defendant No.3 deposed that, defendant No.1 has examined as DW.1 and plaintiff has cross-examined the DW.1 and his previous advocate on record was suffering from illness. Hence, he would not cross-examine the DW.1. During the course of evidence of DW.1, he has made adverse remarks against him, which will affect his case. Hence, it would be just and necessary to recall the DW.1 for cross-examination.

3. The defendant No.1 has filed objection to the above application is that, the suit filed by the plaintiffs in collusion with the 3rd defendant who is none other than one of the family members of the plaintiffs and further the plaintiffs have made allegations against the 3rd defendant that he has acted in a manner detrimental to their interest. An application filed by the defendant No.3 seeking to transpose as plaintiff came to be dismissed by this court after a detailed hearing by a speaking order dated 07.02.2013. Further stated that, there is no relief sought against the defendant No.3 in the said suit and the suit is a collusive suit between the plaintiffs and defendant No.3, in order to defeat the rights of him, who has purchased the suit schedule

property for a valuable sale consideration and the 3rd defendant is permitted to cross examine, he will be put to irreparable loss. Hence, it is prayed to dismiss the applications.

4. I have heard the counsel on the application.

5. After going through the application with affidavit and objection statement, points arise for consideration are ;

1. Whether the defendant No.3 has made out grounds to allow the application?

2. To what order ?

6. This court answer to the above points are as under :

Point No.1: In the Affirmative
Point No.2: As per the final order
for the following:

REASONS

7. **Point No.1:-** The defendant No.3 has filed instant application praying this court to recall the case for cross examination of DW.1.

8. The defendant No.3 has stated in the application is that, his advocate has not cross-examined the DW.1 due to illness. So, the defendant

No.3 counsel has not cross-examined the DW.1, he has made adverse remarks against the DW.3.

9. The defendant No.1 has stated in the objection is that, the suit is a collusive suit between the plaintiffs and defendant No.3. In order to defeat the rights of defendant No.1, the defendant No.3 has purchased the suit schedule property for valuable sale consideration and the defendant No.3 is permitted to cross-examined, the defendant No.1 will be put to hardship.

10. Under the facts and circumstances of the I.A, if the permission is granted to defendant No.3 for cross examination of DW.1, no loss or hardship caused to the defendant No.1 because the defendant No.1 has every right to cross-examine the defendant No.3 with regard to that evidence i.e., cross-examination of DW.1. Hence, the matter is old one and the application is allowed on imposing costs of Rs.1000/-. Accordingly, for the above said reasons this court answered the Point No.1 is in the "Affirmative".

11. **Point No.2:-** In view of the above said findings on the Point No.1, I proceed to pass the following:-

ORDER

I.A dated 02.03.2021 filed by the defendant No.3 U/o 18 Rule 17 of CPC is hereby allowed with costs of Rs.1000/- payable to DLSA.

Resultantly, cross examination of DW.1 is recalled by

**Addl., Senior Civil Judge & JMFC,
Ramanagara.**