

KARN320003262009



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND
J.M.F.C., AT KANAKAPURA**

Dated: This the 30th day of July 2025

PRESENT

Smt. LATHASHREE B.V., B.A.,LL.B.,
I Addl., Civil Judge & JMFC,
Kanakapura.

O.S No.207/2009

Plaintiff : Sri. T.Mallaiah
S/o Thippaiah,
Aged about 70 years,
R/at Gottigehalli Village,
Kaggalahalli Post,
Harohalli Hobli,
Kanakapura Taluk,
Ramanagara District.

-Vs-

Defendants 1 Sri. Shivaiah
S/o late. Siddaiah,
Aged about 60 years,
2 Sri. Kullaiah S/o Lingaiah,
Aged about 25 years,
3 Sri. Lingaiah S/o late.Siddaiah,
Aged about 60 years,
4 Smt. Jayamma D/o late. Dubbaiah,
Aged about 30 years,

5 Smt. Boramma
W/o Dubbaiah,
Aged about 60 years,

6 Smt. Bhagyamma
W/o Shivanna,
Aged about 30 years,

All are R/at Kote,
Harohalli village and Hobli,
Kanakapura Taluk.

7 Sri. Chaluvaraja
S/o late. Nagaiah,
Aged about 25 years,
R/at Sindyanagara,
Harohalli village and hobli,
Kanakapura Taluk.

INTERLOCUTORY APPLICATION No.14

Defendant : Smt. Jayamma
No.4/ Applicant

(D.1 and 5 to 7 Sri. A.R.K., Adv.)
(D.4 Sri. K.A.A., Adv.)

-Vs-

Plaintiff/ : Sri. T.Mallaiah
Opponent

(By Sri. H.L.A., Adv.)

1	Provision under which the applications are filed	:	Under Order 18 Rule 17 r/w Sec.151 of C.P.C.
2	Relief Sought for	:	Recall the DW.1 for cross-examination on behalf of defendant No.4
3	The date on which the application is filed	:	28.06.2025
4	Number of the application	:	One

5	The date on which the objection is filed by different opponents	:	03.07.2025
6	The date on which the common orders were passed on the said application	:	30.07.2025

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.

ORDERS ON INTERLOCUTORY APPLICATION No.I
FILED UNDER ORDER 39 RULE 1 & 2 OF C.P.C.

The defendant No.4 filed Interlocutory Application No.14 under Order 18 Rule 17 r/w Sec.151 of CPC to recall the DW.1 for cross-examination on behalf of her.

2. In the annexed affidavit to I.A No.14, the defendant No.4 goes to submits that, the suit schedule property is part of Thoti service inam land in Sy.No.64 of Gottigehalli village, Harohalli hobli and taluk measuring 6 acre 11 guntas and it is generated in the names of legal heirs of Barabrdar of Thoti Office of Gottigehalli village and her father Dubbaiah is one of the beneficiary under the order of re-grant and has been in joint possession and enjoyment of the regrantees of 6 acres 11 guntas. It is further submitted that, as she is the daughter of Dubbaiah, she has continued the possession over the suit schedule property and that the plaintiff has obtained order from the land tribunal at Kanakapura for a piece of

land in total extent of 6 acres 11 guntas which has no boundaries to the land conferred under Occupancy Right. Hence the plaintiff is illegally claiming the portion of the land under the possession of defendant No.4. Hence, she is interested person in the suit property and the PW.1 has been cross examined on her behalf. Hence, she intends to lead her evidence to oppose the suit relief. However, she was unable to appear before the court. However, it is just and necessary to consider and given opportunity to cross-examine the DW.1 on her behalf and also to lead her defence evidence and cross-examination of DW.1 is necessary as the plaintiff has denied in the evidence that the land in Sy.No.64 is regranted Thoti Service Inam Land. Hence, prays to allow the application in the ends of justice.

3. In contra the counsel for plaintiff has filed objection by submitting that the same is not maintainable either in law or on facts. Further submitted that, the defendant has denied the title and possession of plaintiff over suit schedule property and issues are also framed accordingly and plaintiff has also led his evidence and got marked the documents and also the defendants have cross-examined the plaintiff at length. It is further submitted that, when the matter posted for cross-examination of DW-1, he did not turned up for cross-examination. Hence, the cross-examination of DW.1 is Nil and the said matter was posted for arguments on main. After that, the defendant No.4 has come up with the said

application to recall the DW.1 to cross-examination on behalf of defendant No.4 and also filed another application U/s 151 of CPC to restore the stage of case from arguments to the stage of further evidence of defendants. Hence, both applications filed by the defendant No.4 only with an intention to drag on the proceedings and there is no merits in both the applications. Hence, prays to dismiss the application.

4. Heard both the sides.

5. The following points arise for the consideration by this court is as under:

1. Whether the interlocutory application No.14 filed under Order 18 Rule 17 r/w Sec.151 of C.P.C by the defendant No.4 deserves to be allowed?

2. What Order?

6. Upon hearing of the arguments and on perusal of documentary evidence available on record, the findings of this court to the above points are as under:

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

REASONS

7. **Point No.1:** On perusal of the materials on record, at this stage of the case, it is to be noted that, matter is of the year 2009 and stage was set down for

arguments on main matter. Meanwhile defendant No.4 filed application U/s 151 of CPC seeking to reopen the stage to lead further evidence of defendant. The same was considered to avoid multiplicity of proceedings and as there was no specific objections been raised by the plaintiff. However, the said defendant No.4 has also filed the present application wherein it is to be noted that, in the prayer column of the application the defendant No.4 is seeking this court to recall DW.1 for cross-examination on behalf of defendant No.4. Further in the affidavit annexed to the said I.A at para No.3 the said defendant No.4 submits she intends to lead her evidence to oppose the suit relief and she could not keep herself present and even her counsel was engaged in other court hall. Hence, she could not lead her defence evidence. Further at para No.6 of the affidavit she goes to submits that, she requires an opportunity she cross-examine the DW.1 on her behalf and to lead her defence evidence.

8. Here it is to be noted that, apart from the contentions raised in the objections and the submissions made in the application, as per order sheet the cross-examination of the DW.1 is closed as not tendered.

Further, the present application is filed by defendant No.4 and not plaintiff, when the pleadings of the plaint in its entirety perused it is to be noted that, only defendant No.1 has filed written statement which is later adopted by defendant No.4 to 7 as per order sheet dated 02.12.2009. However subsequently the said defendant No.4 has taken NOC from the earlier counsel and is represented by advocate Sri. K.A.A., and later no individual written statement has been filed by the defendant No.4. Hence, no separate contradictions or contentions with pleadings are placed by defendant No.4 to seek permission for cross-examining the DW.1 and that apart the stage is closed by stating that the DW.1 has not tendered for cross-examination.

9. Hence, when such being the case question of calling the DW.1 by defendant No.4 to adduce his cross-examination will not arise at all. Further, the contents of the application with its affidavit has lot of discrepancies and is not precised whether as to her intention is to cross-examine the DW.1 or to lead her evidence. As already stated she has not taken any

separate pleadings on her behalf, she cannot call upon DW.1 to tender for cross-examination apart from having liberty to lead evidence by her. Hence, with the said observations, it could be stated that, the defendant No.4 has not made out any grounds to consider the application. Hence, this court answered the **Point No.1 is in the “Negative”**.

10. **Point No.2:** In view of above made observations on Point No.1, this court proceeds to pass the following:

ORDER

The Interlocutory Application No.14 filed by the defendant No.4 under Order 18 Rule 17 r/w Sec.151 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on 30th day of July 2025)

Sd/-

(Lathashree B.V.)

I Addl., Civil Judge & JMFC,
Kanakapura.