

ORDERS ON I.A NO.4 AND 5

The defendant No.13 has filed application U/o 18 Rule 17 r/w Sec.151 of CPC and U/s 151 of CPC to recall and reopen the case from the stage of further plaintiff evidence to cross examination of PW.1 in the interest of justice and equity.

2. In the affidavit to the application the defendant No.13 stated that, the plaintiff was examined as PW.1 and the said case is posted for cross-examination of PW.1 on 05.06.2024 and on that day he was not cross examined the PW.1 due to some unavoidable circumstances and domestic problems in his family. So, the said case is posted for further plaintiff evidence. Hence, it is just and necessary to reopen the case from the stage of further plaintiff evidence to cross-examination of PW.1. Hence, it is prayed to allow the application.

3. On the other hand, the learned counsel for the plaintiffs have filed objection stating that, the above said applications are not maintainable either in law or on facts and the same is liable to be dismissed in limine and denied the averments raised by the defendant No.13. It is further submitted that, PW.1 has completed the chief-examination long back during the year 2024 and since she was not cross-examined the stage was proceeded for further evidence and that the defendants willfully did not appear however sufficient time and opportunity has been given now in order to drag on the matter, the present applications are filed. Hence, prays to dismiss the applications.

4. Matter is heard on both the sides.

5. When the entire order sheet is perused, it clearly reflects that the matter is of the year 2017 and the suit is for the relief of partition and separate possession. Meanwhile the order sheet reflects that, the PW.1 has concluded her side of evidence on 16.11.2023 and later the matter was kept for cross-examination of PW.1 and since the defendant did not turn up the same was taken as Nil and matter was posted for further plaintiff evidence. Meanwhile on 13.06.2024 I.A No.2 U/o 7 Rule 11(a) and (d) r/w Sec.151 of CPC was filed by defendant No.13 for which objections was filed by plaintiff on 03.09.2024 and later came to be heard on both the sides and orders came to be passed on 31.10.2025 and matter was kept for issues. Later, this court noticed that, issues were framed. Hence, matter was there on proceeded for further plaintiff evidence. Meanwhile the present applications has been filed by the defendant No.13. Admittedly, sufficient time has been given to the defendant No.13 to cross-examine the PW.1. However, the same was not utilized at that stage. Now when the stage was kept for leading further plaintiff evidence the present applications are filed. However, at this stage after prolonged sequence of trial the matter is now reaching to its final venture. Hence, this court is of the opinion that, if the applications is considered at this stage itself the same would avoid multiplicity of proceedings and further delay. It is also to be noted that, the defendant No.13 is only contesting defendant in the present matter. However, the defendant No.13 filing the said applications at this later stage, it clearly shows that, they have caused delay. Hence, the said plaintiffs has to be compensated for the same for which the costs has to be imposed on the defendant in this regard. Hence, with the said observation this court proceeds to pass the following:

ORDER

The I.A No.4 and 5 filed by defendant No.13 is hereby allowed on costs of Rs.300/- and as final chance with no adjournment in this regard.

Accordingly PW.1 is recalled for cross-examination by defendant No.13.

Call on 26.03.2026

Sd/-
I A.C.J & JMFC, Kanakapura.