

ORDERS ON I.A.No.18

The defendant No.6 & 7 have filed the instant I.A., U/S.151 of C.P.C., and prayed to be pleased to order for discard the evidence of the DW-2 and permit the defendant No.7 to file the evidence affidavit in the above matter.

2. The I.A., copy was served to the other side. The counsel for the plaintiffs has filed the detailed objections and resisted the I.A., filed by the defendant No.6 & 7.

3. Heard the arguments of both sides.

4. On perusal of the rival contention of both the parties, the following points would arise for my consideration;

Point No.1: Whether the I.A.No.18 filed by the defendant No.6 & 7 is deserves to be allowed?

Point No.2: What order?

5. My answer to the above points are as follows:

Point No.1: In the Negative.

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

REASONS

6. **Point No.1:-** It is the urge of the defendant No.6 & 7 that, the DW-2 has filed the evidence affidavit and got marked some exhibits of 'D' series. The counsel for the plaintiffs partly cross-examined the DW-2. The above matter is set down for further cross-examination of DW-2. Due to family dispute between the DW-2 and defendant No.7, the DW-2 is not tendered for further cross-examination intentionally. Hence, prays to discard the evidence of DW-2 and permit the defendant No.7 to lead further evidence of defendants' side.

7. On the other hand, the plaintiffs contended that, when the matter is set down for further cross-examination of DW-2, the defendant No.6 & 7 have moved this I.A., only with an intention to drag the proceedings. If the DW-2 stepped into the witness box, the truth will be come out, hence he is avoiding to enter the witness box to fill up the lacuna and admission given by the DW-2.

8. On perusal of the materials placed on record, admittedly it is a suit for partition and separate possession against the defendants in respect of suit schedule property. In the instant suit the L.Rs., of defendant No.6(e) has filed the evidence and examined as DW-2 and now the matter is set down for further cross-examination of DW-2. When such being the case, the defendant No.6 & 7 have moved this I.A., to discard the evidence of the DW-2.

9. It is well settled preposition of Law that, once the party adduced his evidence before the Court, it cannot be discarded in the eye of Law. At this juncture, I would like to refer the decision rendered by the Hon'ble High Court of Karnataka in the case of **Ramakrishna Bhat V/S. Smt. Radha**, the same is reported in **ILR 2003 KAR 3862**. In the said Judgment the Hon'ble High Court of Karnataka be pleased to held that,

"4. There is no provision under the C.P.C., or for that matter under any law as to the evidence already recorded can be expunged that too at the behest of party who has probably given different answer or admission especially in cross-

examination. In the present case PW-1 was examined and has also been cross-examined and it appears certain admissions have been obtained by the petitioner's counsel while cross-examining. Since the evidence has been completed, even if the answers are unpalatable to evidence cannot be expunged that too when there being no provision for doing so and hence the impugned order passed for expunged the evidence already recorded by the learned Civil Judge is totally illegal and without jurisdiction."

10. The ratio laid down in the aforesaid decision is aptly applicable to the present case on hand. The I.A., filed by the defendant No.6 & 7 is devoid of merits. For considering all these reasons, I answer point No.1 in the Negative.

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

Order

The I.A.No.18 filed by the defendant No.6 & 7 is hereby rejected on payment of cost of Rs.500/-.

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