



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE &  
J.M.F.C., AT MAGADI.**

**:Present:**

**Sri. Shivakumar R., B.A.L., LL.B.,  
Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 25<sup>th</sup> DAY OF MARCH, 2026**  
**O.S. No.318/2016**

**PLAINTIFF** : Smt. Gangamma,  
D/o. Late. Uddandaiah,  
W/o. Ramanarasaiah,  
Aged about 71 years,  
Since dead by her L.Rs.,  
  
(a) Sri. Channigappa R.,  
S/o. Late. Ramanarasaiah,  
Aged about 62 years,  
R/at: Vadhakunte Village,  
Thyamagondlu Hobli,  
Doddabelle Post,  
Nelamangala Taluk,  
Bangalore Rural District.

**(By Sri. H.T.V., Advocate)**

**V/s**

**DEFENDANTS** : 1. Smt. Venkatamadamma,  
W/o. Channappa,  
Aged about 58 years,  
R/at: Somanahalli Village & Post,  
Uttarahalli Hobli,  
Bangalore South Taluk.  
Since dead by her L.R.,



(a) Sri. Channappa,  
Father name not known,  
Aged about 71 years,  
R/at: Somanahalli Village & Post,  
Uttarahalli Hobli,  
Bangalore South Taluk.  
Since dead by his L.Rs.,  
already on record

2. Smt. Gangamma,  
W/o. Byrappa,  
Aged about 55 years,  
50 feet road,  
Near Subrahmanya Temple,  
Hanumanthanagar,  
Bangalore.  
Since died on 19.11.2017 by her L.Rs.,

(a) Smt. Rajamma,  
W/o. Ramachandraiah,  
D/o. Gangamma & Byrappa @  
Boraiah, Aged about 45 years,  
R/at: No.707, Rangaswamy Nilaya,  
3<sup>rd</sup> Cross, Ashok Nagar, Banashankari  
1<sup>st</sup> Stage, Bengaluru – 560 050.

(b) Smt. Shanthamma,  
W/o. Krishnappa,  
D/o. Gangamma @ Byrappa @  
Boraiah, Aged about 43 years,  
R/at: Shettigowdanadoddi Village,  
Bidadi Post & Hobli,  
Ramanagara Taluk & District,  
Bengaluru – 562109.

(c) Smt. Manjula,  
W/o. Puttegowda,  
D/o. Gangamma @ Byrappa @



Boraiah, Aged about 40 years,  
R/at: Chikkanahalli Village,  
Balakuntahalli Post,  
Nandi Hobli,  
Chikkaballapura Taluk & Dist.

(d) Kum. Shobha,  
D/o. Gangamma & Byrappa @  
Boraiah, Aged about 37 years,  
R/at: No.707, Rangaswamy Nilaya,  
3<sup>rd</sup> Cross, Ashok Nagar,  
Banashankari 1<sup>st</sup> Stage,  
Bengaluru – 50.

(e) Kum. Veena,  
D/o. Gangamma & Byrappa @  
Boraiah, Aged about 35 years,  
R/at: No.707, Rangaswamy Nilaya,  
3<sup>rd</sup> Cross, Ashok Nagar,  
Banashankari 1<sup>st</sup> Stage,  
Bengaluru – 50.

(f) Sri. Anilkumar Kum.  
S/o. Gangamma & Byrappa @  
Boraiah, Aged about 33 years,  
R/at: No.707, Rangaswamy Nilaya,  
3<sup>rd</sup> Cross, Ashok Nagar,  
Banashankari 1<sup>st</sup> Stage,  
Bengaluru – 50.  
Since died on 4.11.18 &  
unmarried & No L.Rs., to him

3. Smt. Sanjeevamma,  
W/o. Rangappa,  
Thathaguni Village & Post,  
Kengeri Hobli,  
Bangalore South Taluk.



4. Sri. Uddandaiah,  
S/o. Gurappa @ Uddandaiah,  
Aged about 48 years,  
R/at: Gangappanahalli,  
Thippagundanahalli Post,  
Bangalore South Taluk,  
Bangalore Rural District.

(D1 Dead)  
(D2(a, c, d & e Exparte)  
(D3 by Sri. T.K.H. Advocate)  
(D4 by Sri. P.S.H. Advocate)

**COMMON ORDER ON I.A.No.11**

**APPLICANT** : Sri. Uddandaiah (D4)

**V/s**

**OPPONENTS** : Smt. Gangamma,

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The defendant No.4 has filed I.A.No.11 U/S.151 of C.P.C., praying to reopen the above case by recalling the Order dated: 27.02.2025 thereby permit the defendant No.4 to cross-examine PW-1. The defendant No.4 has also filed I.A.No.12 U/S.151 of C.P.C., praying to reopen the above case by recalling the Order dated: 27.02.2025 thereby permit the defendant No.4 to cross-examine PW-1 in the above case in the interest of justice and equity.



2. The I.As., supported with the respective affidavits of the defendant No.4. It is stated in the affidavits that, the Plaintiff has filed the above suit seeking for partition against Defendants. The defendant No.4 has filed Vakalath on 14.10.2019 and the earlier counsel was not intimating the status of the said case and hence the defendant No.4 has obtained NOC Vakalath and engaged the service of new counsel. The defendant No.4's present counsel has informed him that the cross examination of PW1 has not been done. Under the circumstances it is just and necessary to reopen the above case by recalling the order dated 27.02.2025 thereby permit him to cross examine PW1 in the above case. Hence, these I.As.

3. The I.A., copies were served to the plaintiff's side. The plaintiff in her statement of objection denied the I.A., averments and interalia contended that, the above applications filed by the defendant No.4 only to drag the proceedings not for contest the above matter. Therefore, the above application is deserves to be dismissed. The Plaintiff further contended that, the above suit filed by the plaintiff for seeking partition and separate possession of



1/4th share in respect of the suit Schedule Property. The above suit was filed in the year 2008 in O.S.No.198/2008 before the 2<sup>nd</sup> Addl. Civil Judge at Bengaluru. The Hon'ble Court was ordered to issue notice to the defendants, the notice was duly served to the defendants. After service of notice, Vakalath was filed by this 4<sup>th</sup> defendant on 21-06-2010 and no written statement was filed within a stipulated period. Hence, the 2<sup>nd</sup> Addl. Civil Judge has ordered that written statement has not filed by the this defendant No.4. Thereafter, the interlocutory application No.5 was filed under Section 151 of CPC to recall the order along with the written statement permitted him to file written statement on 29-03-2012. The said I.A., was allowed on cost of Rs.300/-.

4. It is further contended that, thereafter the 2<sup>nd</sup> Addl. Civil Judge has framed the issues on 21-05-2012 and the above matter was posted for plaintiff evidence on 14-08-2012. Thereafter, the Affidavit by way of evidence was filed on 08-10-2012 and documents got marked by the plaintiff and the above matter was posted for further evidence of PW-1. The plaintiff also lead her further evidence and matter was posted for cross-examination for



PW-1. The sufficient opportunities were given by the 2<sup>nd</sup> Addl. Civil Judge, Bengaluru to the defendants to cross-examine the PW-1. But the defendants utterly failed to cross-examine the PW-1. Thereafter, the Hon'ble Court has posted the matter for defendant evidence. Sufficient opportunity was given to lead their evidence but they have not lead their evidence also. Thereafter, due to set up of Senior Civil Judge in all the Taluk Courts the above matter was transferred from Bengaluru Rural Court to this Court.

5. It is further contended that, after transferring the above suit from Bengaluru Court to this Court the earlier evidence was discarded and lead fresh evidence by the plaintiff by way of examination in chief by way of Affidavit on 19-10-2022 and documents got marked. After examination of PW-1 no cross - examination was done by this defendant No.4. sufficient opportunity was given by this Court to cross-examine the PW-1, despite this defendant No.4 has not cross-examined the PW-1. Thereafter, this Court was pleased to post the above matter for defendant evidence, no evidence was lead by this defendant. Thereafter, the above matter was posted for arguments.



6. The Plaintiff further contended that, the plaintiff has argued the above matter and requested this Court to post the above matter for Judgment as this defendant has not seriously contested. Without considering request of the plaintiff, this Court adjourned, the above matter was posted for defendants' arguments. No arguments made by this defendants again to give one more chance to the defendant No.3 and the matter was adjourned to defendants' arguments. Though no one has come forward to argue the matter. Thereafter, this Court passed an order that the defendant No.3 and 4 counsels are absent. Perused the order sheet, the defendant No.3 and 4 counsel are not addressed the arguments. No grounds to grant one more time hence the above matter is posted for Judgment. However, liberty is given to the defendant No.3 and counsels to submit written submission if any before the office on or before 11-04-2025, for Judgment by 16-04-2025.

7. It is further contented that, after posting for Judgment this defendant filed false, frivolous and vexatious application on 11-04-2025 for permitting him to file written statement by condoning the delay if any. These defendant is not aware of the proceedings



and did not have any interest to defend the case, even though he did not aware whether he filed written statement or not. Therefore, this facts clearly disclosed that only to harass and give trouble to the plaintiff, he filed the above false application after lapse of 15 years. Therefore , the above application is deserves to be dismissed on the payment of cost of Rs.25,000/-.

8. It is further contended that, when the application was dismissed on the payment of cost again file another application to recall the order dated: 27.02.2025 permitting the defendant No.4 to cross-examine PW-1. The suit was filed in the year 2016 the first evidence was lead in the year 2012 thereafter matter was posted for cross-examination of PW-1. No cross-examination was done by the defendant No.4. Therefore, this defendant have no locus-standi to seek any relief from this Court, hence the application is deserves to be dismissed. The present application also came to be filed only to drag the proceedings. Hence, the present application is liable to be dismissed. After filing the suit the plaintiff Smt. Gangamma died leaving behind his son Sri. Channigappa, who came on record as L.Rs. The unnecessary delay caused by the defendants for which



the plaintiff Smt. Gangamma died. For all these grounds the plaintiff prays to reject the I.As., filed by the defendant No.4 with exemplary cost.

9. Heard the arguments of both sides.

10. On perusal of the rival contentions and other materials placed on record, the following points arise for my consideration.

1. Whether the I.A.No.11 & 12 filed by the defendant No.4 are deserves to be allowed?

2. What order?

11. My findings for the above points are as follows.

Point No.1: In the Affirmative,

Point No.2: As per final order.

For the following,

### **REASONS**

12. **POINT NO.1:-** When the matter is set down for Judgement, at this stage the defendant No.4 has filed these I.As., to reopen this case for cross-examination of PW-1. It is the urge of the defendant No.4 that, he has filed the vakalath on 14.10.2019 and the earlier counsel was not intimating the status of the said case and hence the defendant No.4 has obtained NOC vakalath and



engaged the service of new counsel. The defendant No.4 present counsel and informed him that the cross-examination of PW-1 has not been done. Under the circumstances it is just and necessary to recall the order dated: 27.02.2025 thereby permit him to cross-examine PW-1 in the above case.

13. On the other hand, the plaintiff contended that, when the matter is posted for Judgement, the defendant No.4 has filed this frivolous and vexatious application only to protract the proceedings and also to harass the plaintiff.

14. The learned counsel for the plaintiff vehemently argued that, once the matter is posted for Judgement, it cannot be reopened and prays for to reject the I.As., filed by the defendant No.4.

15. On perusal of the materials placed on record, admittedly it is a suit for partition and separate possession in respect of suit schedule properties of plaintiff's share. The defendant No.4 contended that, after appointment of new counsel it is noticed that, the cross-examination of PW-1 has not done by the previous counsel of defendant No.4. Hence, the cross-examination of PW-1



is very much necessary to defend the case of the defendant No.4. In a suit for partition to defend the case of the defendants, is always lies upon the defendants. Under these facts and circumstances, one opportunity would be given to the defendant No.4 to cross-examine the PW-1 by imposing cost, it would meet the ends of justice. The Hon'ble Supreme Court of India in catena of Judgement in time and again held that, even though the matter is posted for Judgement, if the parties made sufficient grounds, the case may be reopened. At this juncture, I would like to refer the decision rendered by the Hon'ble Supreme Court of India in the case of **K. K. Veluswamy V/s. N. Palanisamy** reported in **(2011) 11 Supreme Court Cases 275**, wherein the Hon'ble Apex Court of India held that,

'Power under Sec.151 can be exercised to deal with any particular procedural aspect which is not provided expressly or impliedly in CPC, if in appropriate cases can exercise its discretion to permit reopening of evidence and/or recalling of witnesses for further examination/cross-examination after evidence led by parties is concluded and arguments have commenced or even when arguments have concluded and case has been



reserved for Judgement, as there is no provision in this regard in CPC after deletion of Order 18 Rule 17-A.

16. The ratio laid down in the aforesaid Judgement is aptly applicable to the present case on hand. In the supportive affidavits of annexed I.A.No.11 & 12 the defendant No.4 has no doubt sufficient cause to allow the I.As. If these I.As., are allowed, there is no harm cause to the other side. For considering all these reasons, this court answer the Point No.1 in the Affirmative.

17. **POINT NO.2:** In view of reasons on point No.1, I proceed to pass the following,

**ORDER**

IA.No.11 & 12 filed by the defendant No.4 is hereby allowed on payment of cost of Rs.1,000/- each.

The case is reopened for cross-examination of PW-1 by defendant No.4.

For cross of PW-1 by defendant No.4  
29.04.2026.

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **25<sup>th</sup> day of March, 2026.**)

**(Shivakumar R.)**

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