

- Plaintiff No.1, 2 and defendant No.2 to 7 are his legal heirs.
2. Smt. Shivarudramma,
W/o. Late. Nanjundappa,
Aged about 66 years,
R/at: No.101, 4th 'A' Cross,
Pipeline Road,
Vijayanagara,
Bengaluru – 560 040.
 3. Smt. Byramma,
W/o. Late. Veerabhadraiah,
Died leaving behind
Defendant no.8, 9, 14 & 15.
 4. Smt. Lalithamma,
W/o. Honnappa,
Aged about 61 years,
 5. Sri. Paramashivaiah,
S/o. Late. Shivarudraiah,
Aged about 59 years,
 6. Sri. Karibasavaiah,
S/o. Late. Shivanna,
Aged about 66 years,
- D1, 3 to 6 are R/at:
Kethohalli Village,
Tavarekere Hobli,
Chunchanakuppe Post,
Bengaluru South.
7. Smt. Gowramma,
W/o. Mariswamy,
Aged about 49 years,
R/at: No.47/A, BCC
Layout, 8th 'B' Cross,
14th Main, Vijayanagar,
Bangalore.

8. Sri. B. V. Srinivasa Murthy,
S/o. Late. Veerabhadraiah,
Aged about 44 years,
R/at: Yediyur, Kunigal
Taluk, Tumkur District.
9. Sri. B. V. Honnappa @
B. V. Honnaswamy,
S/o. Late. Veerabhadraiah,
Aged about 40 years,
R/at: No. 120, ISEC Road,
Nagarabhavi Village,
Bengaluru – 560 072.
10. Sri. G. S. Shivaprakash,
S/o. Late. Shivanna, Major,
R/at: Ganapathihalli,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South Taluk.
11. Sri. S. Srinivasa Reddy,
S/o. G. Siddareddy, Major,
R/at: Reddy Farm and
Nursery, BEML Layout,
R.R. Nagar, 3rd Stage,
Mysore Road,
Bengaluru – 560 098.
12. Sri. Byrappa,
S/o. Late. Shivanna,
Major, R/at. Kethohalli,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South.
13. Smt. S. R. Tulasaimatha,
W/o. S. Raju, Major,

R/a: Anamanahalli,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

14. Smt. Jayamma @ Vijaya,
W/o. Chandrashekar,
D/o. Late. Veerabhadraiah,
Aged about 40 years,
R/at: Muddanapalya Road,
Anjanapura, Magadi
Main Road, Bengaluru.
15. K. Shivarudra Prasad,
S/o. Karibasavaiah,
Aged about 19 years,
R/at: Kethohalli,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South.
Also at: C/o. Gowramma,
W/o. Mariswamy,
R/at: No.47/A,
BCC Layout, 8th 'B' Cross,
14th Main, Vijayanagar,
Bengaluru – 560 040.

(D1 & 3 dead)
(D2, 5 to 7 by Sri. G.P. Advocate)
(D8 by Sri. L.C. Advocate)
(D9 by Sri. D.H.M. Advocate)
(D11 by Sri. C.V.K. Advocate)
(D14 exparte)
(D15 by Sri. V.F.K. Advocate)

ORDER ON IA NO.24 and 25

The present suit is for declaration, permanent injunction,

partition and for mesne profits.

2. For the sake of convenience and to avoid repetition of facts these application are taken together for common discussion. The present applications have been filed by defendant no.9 seeking permission to reopen the side of defendant no.5 & 6 and recall the witness of defendant no.5 & 6 for cross-examination. It is the case of defendant no.9 that he intends to cross-examine the witness of defendant no.5 & 6 on Will dated: 05.12.1981, which is made in collusion with defendant no.8. In this regard, defendant no.9 prays as above.

3. The plaintiffs and defendants did not file objections to the application.

4. Heard arguments of counsel.

5. Considering the contention of both the parties following points arise for my consideration.

1. Whether defendant no.9 has made out a case to

re-open the side of defendant no.5 & 6 as sought for?

2. Whether defendant no.9 has made out a case to recall the witness of defendant no.5 & 6 for cross-examination?
3. What order?

6. My finding for the above points are as follows

Point No.1	:	In the affirmative
Point No.2	:	In the affirmative
Point No.3	:	As per final order for the following ;

REASONS

7. **Point No.1 and 2:** - For the sake of convenience and to avoid repetition of facts these points are taken together for common discussion. It is the case of defendant no.9 that he intends to cross-examine the witness of defendant no.5 & 6 on the Will dated: 05.12.1981.

8. Be it noted, the defendant no.9 intends to cross-examine the witness of defendant no.5 & 6. It is necessary to note that right of defendant no.9 to put forth his defence cannot be curtailed as the same amounts to curtailing the rights of defendant no.9 to put forth

his stand. Further, on perusal of the order sheet, it is clear that opportunity was not accorded to defendant no.9 to cross-examine the witness of defendant no.5 & 6. So also, considering the application, I am satisfied with the reasons made out by defendant no.9 for recalling the witnesses of defendant no.5 & 6 for cross-examination. I am of the further view that the defendant no. 5 & 6 have every opportunity to explain the circumstances by way of re-examination. This being the case, as the defendant no. 5 & 6 have the right to re-examine their witnesses, no harm will be caused to the defendant no. 5 & 6 if the witnesses of defendant no. 5 & 6 are recalled for cross-examination by defendant no.9, as the right of defendant no. 5 & 6 re-examine their witnesses and hence to explain the circumstances remains intact. This being the case it is not just and proper to curtail the rights of defendant no.9 from cross-examining the witnesses of defendant no.5 & 6.

9. It is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association

v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

In view of the law on hand and considering the circumstance of the present case I am of the view that there is no impediment to permit defendant no.9 to cross-examine the witness of defendant no.5 & 6.

10. It is to be considered that if the present application is not allowed defendant no.9 cannot substantiate his defence and hence the inconvenience which may be caused to him is more than the inconvenience which may be caused to defendant no.5 & 6 if the applications are allowed. Further, if the applications are not allowed the injury which may be caused to defendant no.9 cannot be compensated at any cost, on the other hand defendant no.5 & 6 will have the opportunity to contest the matter and get the same

decided on merits. Considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no. 1 and 2 in the affirmative.

11. **Point no.3**:- In view of reasons on point No.1 and 2, I proceed to pass the following,

O R D E R

IA no.24 and 25 filed by defendant no.9 are hereby allowed on cost of Rs.200/- each.

**The side of defendant no. 5 & 6 is re-opened.
Defendant no.9 is permitted to cross-examine
the witness of defendant no.5 & 6.**

(Dictated to the Typist directly on the compute, typed by her, corrected by me and then pronounced in the open court on this the **19th day of November, 2022.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC
Magadi.**