

ORDERS ON I.A.No.21

The plaintiffs 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 PW-1 and permit the plaintiff No.2 to lead evidence on behalf of plaintiff No.1 & 3 in the above matter.

2. The I.A., copy was served to the other side. In spite of providing sufficient opportunities, the defendants have not chosen to file objection to I.A.No.21. Hence, objection to I.A.No.21 is taken as not filed.

3. Heard the arguments of plaintiffs' side. In spite providing sufficient opportunities the counsels for the defendants have not addressed the arguments on IA No.21. No grounds to grant one more time. Hence, matter is posted for orders on IA No.21. However, liberty is given to the defendants' counsels to submit written submissions if any before

office, but the counsels for the defendants failed to do so.

4. On perusal of the materials placed on record, it is the urge of the plaintiffs that, the PW-1 is suffering from ill-health i.e., stroke and he has lost memory and also to an extent his speech very recently. Hence, he is unable to appear before this Court for cross-examination in the above matter. Hence, discard the evidence of PW-1 and permit the plaintiff No.2 to lead further evidence on behalf of plaintiff No.1 & 3 in the above matter.

5. 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 properties. In the instant suit the plaintiff No.1 has examined the PW-1 and got marked certain documents as exhibits 'P' series. Now the above matter is set down for cross-examination of PW-1. When such being the case, the plaintiffs have filed this I.A., to discard the evidence of the PW-1 and permit the plaintiff No.2 to lead further evidence on behalf of plaintiff No.1 and 3 in the above matter.

6. 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."

7. The ratio laid down in the aforesaid decision is aptly applicable to the present case on hand. The I.A., filed by the plaintiffs is devoid of merits. For considering all these reasons, I proceed to pass the following;

Order

The I.A.No.21 filed by the plaintiffs is hereby rejected on payment of cost of Rs.200/-.

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