

25.04.2024

Plf:- Sri. T.P., Adv.,
 Dft:-1:- Sri. S.G.R., Adv.,
 Dft:-2 to 8:- Placed Exparte,
 Dft:-9:- Sri. M.V.S., Adv.,
 For Orders of IA No.XII & XIII.

1	Provision under which the application is filed	Under Order XVIII Rule 17 R/w Sec.151 of C.P.C
2	Relief sought for	To Reopen & Recall of DW-1 for cross examination.
3	The date on which the applications are filed	23.04.2024
4	Number of the application	I.A. No. XII & XIII
5	The date on which the objections are filed by different opponents	24.04.2024
6	The date on which the orders were passed on the said application	25.04.2024

ORDER ON I.A.No.XII & XIII

These applications are filed by the plaintiff U/Sec.151 of C.P.C., for re-open and U/O XVIII R.17 R/w. Sec.151 of C.P.C, for recall of DW-1 for the purpose of Cross-Examination.

2. In support of the applications the plaintiff filed affidavit contending that, the plaintiff filed the present case for partition and separate possession. On 10.04.2024 the matter

was posted for cross-examination of DW-1, the plaintiff counsel not appeared before the court for his inconvenience. If the applications are not allowed the plaintiff will be put into great hardship & injury. Hence, prays to allow the applications.

3. On the other hand, the counsel for defendant No.1 filed objection and contended that, the application filed by the plaintiff is not maintainable either in law or on facts of the case. The plaintiff in order to drag on the proceedings has filed present application for seeking cross examination of DW-1. The contents stated in the applications are all false hence, prays to reject the applications.

4. I have heard argument counsel for the plaintiff & defendant No.1.

5. The following points arises for my consideration :

1. Whether the applications filed by the plaintiff is deserves to be allowed?

2. What order ?

6. My answers to the above points as follows

Point No.1. In the '**Affirmative.**'

Point No.2. As per final order.

REASONS

7. **Point No.1:** I have carefully gone through the records, the plaintiff has filed the suit for the relief of partition and separate possession. The plaintiff filed applications for recall of DW-1 stating the plaintiff counsel not appeared before the court and not conduct cross-examination hence, the plaintiff could not cross-examined the DW-1. Hence, it is just and necessary to recall DW-1. On the other hand, the counsel for defendant No.1 contended that, even though sufficient opportunity the plaintiff counsel not cross examined DW-1. The plaintiff simply to drag on the proceedings filed present application. Hence, prays to reject the applications.

8. It is well settled principle that, the witness can be recalled at any time if applicant

shows valid grounds for recalling of witness. The object of re-call of witness is that, there may not be failure of justice on account of mistake of either party in bringing the valuable on records. It is well-established principle of law that every opportunity has to be given on either side. Now the case is posted for argument, therefore to meet the ends of justice applications to be allowed on cost. Under the facts and circumstances of the case, I am of the opinion that one more opportunity is to be accorded to the plaintiff by imposing costs to compensate the defendant No.1. Under the facts and circumstances of the case, I am of the opinion that, the applications filed by the plaintiff is deserves to be allowed on cost. Accordingly, I answer point No.1 in **Affirmative**.

9. **Point No.2:** In view of the above reason, I proceed to pass the following:

ORDER

The interim applications filed by the plaintiff U/S.151 of C.P.C. and U/O.XVIII R.17 r/w. Sec.151 of C.P.C., are hereby allowed on cost of Rs.500/-

and consequently stage is reopened and
DW-1 is hereby recalled.

For cross of DW-1.

Call on 05.06.2024.

**Prl. Civil Judge & JMFC,
Magadi.**