

**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC., GUBBI**

**Present: Smt. Radha S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated this the 12th day of March 2019

O.S.210/2013

Plaintiffs : V. anuradha D/o Late
Venkateshaiah W/o
Vivekanand, 33 years,
R/o No. 61/2, Yathiraju
Naidu road, D.J. Haily
Main Road, Bangalore.

V/s

Defendants : Nandeesh S/o Late
Venkateshaiah,
30 years,
R/o Nandihally Village,
Chelur hobli,
Gubbi Taluk.
And others.

Applicants : Anuradha

V/s

Opponents : Nandheesh and others

(Smt. Radha.S)
Prl. Civil Judge & JMFC,
Gubbi.

**ORDER ON I.A NOS. 18 AND 19 FILED UNDER
SECTION 151 OF CPC BY THE PLAINTIFF**

1. The plaintiff has filed these IAs Under Section 151 of CPC, seeking to re-open the case for defendants side evidence and to recall DW4 and DW5 for cross-examination.

2. In the affidavit, the applicant has stated that when the case was posted for cross examination of Dw4 and 5 her counsel was engaged in other court as such he could not cross examined the DW4 and 4 as such it is very necessary to cross examine the Dw4 and 5 to prove her case. Hence the plaintiff has prayed for allowing the IAs.

3. Sri CRB Advocate for the defendant No. 7 has filed objections to present applications, wherein the 7th defendant denied the contents of affidavit and prayed to dismiss the Ias as the case is posted for judgment and at this stage these applications

are not maintainable and on these grounds prayed to dismiss the Ias.

4. I have heard the learned counsel for plaintiff and defendant and perused record.

5. The points that arise for my consideration are:

(1) Whether the applicant has made out grounds for allowing the IAs?

(2) What Order?

6. My answers to the above points are as follows:

Point No.1 : In the Negative.

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

::REASONS::

7. Point No.1 : The plaintiff has filed this suit seeking the relief of partition and separate possession in respect of the suit schedule properties. The defendants have appeared before the court through their counsels and filed their written statement. After completion of evidence

of defendants side and after hearing the argument, case was posted for Judgment on 16.03.2019. When the case was posted for judgment the plaintiff moved an advancement application on 07-03-2019 and filed these IAs U/s 151 of CPC with a prayer to recall the DW4 and 5 for cross examination. It is pertinent to note that, when the case was reserved for cross examination of DW4 on 18-09-2018, neither the plaintiff nor plaintiff's counsel were present before the court as such cross examination of DW4 has been taken as nil and when the case was posted for arguments, then also the neither the plaintiff nor plaintiff's counsel were represent the case as such case was posted for arguments by defendants. That, on 25-02-2019 after hearing the arguments by 7th defendant the case is posted for judgment on 16-03-2019. After the lapse of 6 months the plaintiff has filed these applications that too when the case is reserved for judgment.

8. Now when the case is posted for judgment, the plaintiff has filed these 2 applications seeking to re-open the case for evidence and to re-call DW4 and DW5 for cross examination. In the affidavit, the applicant has stated that her counsel was engaged in other court when the case was posted for cross examination of DW4 and DW5. It is pertinent to note that, in the present case totally 4 witnesses have been examined by the defendants as DW1 to 4 but DW5 is not been examined by the defendants, as such the question to recall the DW5 for cross examination as prayed by the plaintiff does not arise at all.

9. I have meticulously gone through the entire contents of affidavits which are annexed to present applications, there is no sufficient reasons to recall the DW4 for cross examination. The main question to be considered is that whether this case can be reopened for evidence, when the same has been posted for judgment. At this stage it is

worthy to mention the decision of Hon'ble High Court of Karnataka reported in ILR 2004 KAR 2215, in the case of Rabiya Bi Kassim M V/s The Country Wide C.F.S. Ltd, it is held - Once the matter has been heard and posted for judgment, nothing is required to be done by the court except to pronounce the Judgment - Interlocutory application to reopen the case and record further evidence after the matter is reserved for pronouncement of judgment, is not permissible - No application can be filed after the final arguments have been heard and the matter is posted for judgment.

10. In view of the above discussions and in the light of the judgment of the Hon'ble High court of Karnataka reported in ILR 2004 KAR 2215, in the case of Rabiya Bi Kassim M V/s The Country Wide C.F.S. Ltd as discussed Supra, the present applications filed by the plaintiff seeking to reopen the case for evidence and to recall DW4 and DW5

for cross-examination is not maintainable, at this stage when the case is posted for judgment. Therefore no grounds are made out by the applicant for allowing the IAs. Hence Point No.1 is answered in the Negative.

11. Point No.2 : For the aforesaid reasons and finding on Point No.1, I proceed to pass the following:

ORDER

I.As i.e I.A Nos. 18 and 19 filed Under Section 151 of CPC by the plaintiff are dismissed.

No Order as to cost.

(Dictated to the stenographer, transcribed, typed and print out taken by her and then corrected, signed and then pronounced by me in the open court on this the 12th day of March 2019).

(Smt. Radha.S)
Prl. Civil Judge & JMFC,
Gubbi.