

ORDER ON APPLICATION FILED BY THE PLAINTIFF
UNDER SECTION 151 OF CPC.

The plaintiff has filed this application under Section 151 of CPC, to recall PW.3 by setting aside the order of discard and permit P.w.3 to render himself to get cross-examine.

2. In the affidavit, the plaintiff has stated after examining P.w.3 by filing affidavit in lieu of examination in chief, Pw.3 due to ill-health could not appear before the Court. Thereafter this Court has closed the evidence of P.w.3 as discarded. If the application is not allowed, the plaintiff would put to loss and injury. Hence prayed to allow the application.

3. Defendant No.3 has filed objections to the application and contended that the plaintiff has not produced any documents to support the reasons mentioned in the application. When the matter is posted for cross examination of D.w.1, the plaintiff has filed this application to drag the case. After lapse of 2 years the plaintiff has filed this application to recall P.w.3 to

render himself to get cross examination. If the application is allowed defendant No.3 would suffer loss and injury. Accordingly prayed to dismiss the application.

4. Heard arguments on both the side.

5. On perusal of order sheet, it is appears that inspite of sufficient opportunity P.w.3 has remained absent. As such on 13.01.2021 the evidence of P.w.3 was taken as nil as he did not turn up before the court to get cross examine. Thereafter the case was posted for defendant evidence. When the matter is posted for cross examination of D.w.1, the plaintiff has filed the present application to recall the stage and permit P.w.3 to get cross examine.

6. This is a suit for declaration and permanent injunction in respect of the suit schedule properties. The cross examination of P.w.3 was taken as nil on the ground that P.w.3 did not turn up before the Court. The plaintiff has contended that due to ill-health P.w.3 has not turned up before the Court. Considering the said fact and circumstances, in order to

adjudicate the matter and in order to avoid multiplicity of proceedings, this court of the opinion that an opportunity to be given to the PW-3 to get cross-examine and put forth his case. However, the delay caused by the plaintiff can be compensated in terms of costs imposing on them. This court of the opinion that costs of Rs.1000/- would be just in order to compensate the delay caused by the plaintiff. Accordingly, application is hereby allowed and I proceed to pass following order;

::ORDER::

Application filed by the plaintiff
under section 151 of CPC is hereby
allowed on costs of Rs.1,000/-.

For cross examination of P.w.3 by
30.11.2021 by 02.01.2024

Prl. Civil Judge & JMFC,
Kunigal.