

ORDER ON IA.NOs.13 & 14

Plaintiffs have filed IA.No.13 under Order XVI Rule 1 read with Section 151 CPC praying the Court to allow them to examine witnesses on their behalf in this suit.

2. They have also filed IA.No.14 under Order XVIII Rule 17 read with Section 151 CPC praying the Court to reopen the case for plaintiffs' side evidence and to permit them to lead further evidence by examining two witnesses.

3. In support of the above applications, plaintiff No.7 has filed affidavit stating that the witnesses sought to be examined are related to defendants. They are having full knowledge and they are aware of the relationship between the deceased Devaki and Pundalik Waglekar. The witnesses know the family of Koyar Waglekar. Recently the plaintiffs had no occasion to meet the witnesses. When the plaintiffs met the witnesses recently, they have stated that they know the full facts of the case and since they are family members and related to late Pundalik Waglekar, they are ready to come to the Court and state the true facts. There was no occasion to file the applications earlier as these witnesses were unknown to the plaintiffs. Therefore there is no intentional delay in filing the applications. Hence it is prayed to allow both the applications.

4. Defendant has filed common objections to the both the applications contending that they are not maintainable under law and on facts. It is contended that the plaintiffs were in the habit of filing affidavit of one plaintiff and again

another plaintiff and citing witnesses and leading evidence again, the same was uncalled for. It is nothing but an attempt to improve the case when the witnesses were cross examined and certain admissions were taken. After closure of the evidence of both sides and when the case was posted for arguments, after taking 2-3 adjournments, now the plaintiffs have come up with these applications. There is a stage in CPC for everything. With these, the defendant has sought for dismissal of the applications with costs.

5. Having heard the learned counsel for both parties and on perusal of the entire records, the only point that arises for Court's consideration is :

“Are there any grounds to permit the plaintiffs to examine witnesses by reopening the stage of the suit as prayed for?”

6. My answer to the above point for consideration is in the '*Negative*' for the following :

R E A S O N S

7. On perusal of the records, it comes to be seen that the plaintiffs have filed this suit for partition and other reliefs claiming a share in the suit schedule properties which consist of 10 items of immovable properties. Defendant has resisted the suit by filing written statement. Based on the pleadings, this Court has framed as many as nine issues and posted the matter for trial. Both the plaintiffs and defendant have adduced oral as well as documentary evidence in support of their case.

8. Pertinently, these applications are filed at the stage of arguments.

9. On perusal of the records, it can be noticed that the plaintiffs had ample opportunities to examine the witnesses as cited in IA.No.13.

10. It is to be noted that the plaintiffs apart from examining themselves as PWs.1 & 2 respectively, they have also examined four witnesses as PWs.3 to 6. It appears that the plaintiffs had examined sufficient number of witnesses in this matter. However it is not forthcoming as to how the witnesses to be examined are very much necessary to prove their case. The only reason assigned by the plaintiffs that they met the witnesses recently and informed about the knowledge of their family, appears to be an afterthought, and the same cannot be believed. The contention of the plaintiffs that till recently they had no occasion to meet those witnesses cannot be accepted, at this belated stage of the matter.

11. Needless to state that it is not the quantity but the quality of evidence to be considered.

12. Notably, the instant applications are highly belated, because they are filed at the stage of arguments that too after taking couple of adjournments for arguments.

13. The suit is of the year 2020.

14. The learned counsel for the defendant while arguing the matter, pressed into service a decision of Hon'ble Apex

Court reported in **AIR 2009 SC 1604 – Vadiraj Naggappa Vernekar (D) through LRs Vs. Sharad Chand Prabhakar Gogate.** Para 17 of the said decision is reproduced herebelow for ready reference:

“17. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witnesses which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission of the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case. Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but is ultimately within the Court’s discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

15. In the light of the above decision, I have once again carefully perused the materials on record. It is however to be noted that the plaintiffs have not made a case to exercise discretion to reopen the matter so as to enable them to examine two witnesses as prayed in their applications. At the cost of repetition, it is to be stated that the applications are not only belated but, are without any substance for the reasons indicated above. Therefore the learned counsel for the defendant is more than justified in stating that the subject applications are filed only to drag the proceedings. As already

stated the plaintiffs had enough opportunities to examine the proposed witnesses. But they have not availed such opportunities and have now come up same that they came to know of the witnesses very recently, cannot be countenanced.

16. Thus viewed from any angle, I do not find any grounds to allow both the applications. Hence, the applications deserve to be rejected. Accordingly answering the point for consideration in the '**Negative**', I pass the following :

ORDER

- (i) IA.No.13 filed by the plaintiffs under Order Order XVI Rule 1 read with Section 151 CPC and IA.No.14 filed under Order XVIII Rule 17 read with Section 151 CPC are ***rejected.***
- (ii) There is no order as to costs.
For Arguments by 15-10-2025.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then initialed by me and pronounced in the Open Court on the 8th day of October, 2025)

Addl. Senior Civil Judge,
Karwar.