

:: Orders on I.A.No. 7 to 9::

The plaintiff has filed these I.A's under section 151 of CPC for reopen of the case and under Order 18 Rule 17 R/w 151 of CPC to permit the plaintiff to lead further evidence and under Order 16 Rule 1 and 2 R/w 151 of CPC to permit the plaintiff to file list of witness and issue summons to witness.

2. The plaintiff sworn to an affidavit stating that, the matter is posted for arguments and now she wants to examine the witness shown in the I.A. No. 9 who is her aunt and examination of witness is necessary for adjudication of the case. All the parties to the suit are members of joint family and her father had contributed the money for purchase of suit schedule property. The said witness is having personal knowledge of the said transaction. Therefore it is necessary to reopen the case and to lead further evidence. If the applications are not allowed, she will be put to heavy loss and injury. No prejudice will be caused to the other side, if the applications are allowed and sought to allow the applications.

3. On the other hand the defendant No. 1 has filed written objections denying the averments of the affidavits and stated that

the applications filed by the plaintiff are at belated stage. No reasons are assigned as to file earlier the witness was not examining and what prevented the plaintiffs to examine the witnesses earlier. No explanation for the delay is tendered in the applications. The Court had given sufficient opportunity to the plaintiff to lead further evidence and after closure of evidence of plaintiff, the defendants have led their evidence and the case has reached the fag end therefore at this stage applications are not maintainable and prayed to reject the applications.

The defendant No.2 has filed memo stating that she adopts the objections filed by the defendant No.1 to the I.A. No. 7 to 9.

4. Heard on I.A's.

5. The following points arise for my consideration;

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

2. **What order ?**

6. My answer the above points is as under;

Point No.1:- **In the Affirmative.**

Point No.2:- Is as per the final order for the following;

REASONS

7. Point No.1:- The plaintiff has filed suit for declaration in respect of Will dated 18-10-2019, 29-09-2011 and Gift Deed dated 16-06-2022 and for partition and separate possession. When the case was posted for arguments on merits, the plaintiff has filed these applications stating that the matter is posted for arguments and now she wants to examine the witness shown in the I.A. No. 9 who is her aunt and examination of witness is necessary for adjudication of the case. All the parties to the suit are members of joint family and her father had contributed the money for purchase of suit schedule property. The said witness is having personal knowledge of the said transaction. Therefore it is necessary to reopen the case and to lead further evidence. If the application is not allowed, she will be put to heavy loss and injury. No prejudice will be caused to the other side.

9. On perusal of the order sheet it shows that though the opportunity has been granted, but the plaintiff not led evidence of witness shown in the I.A. No.9. Now in the affidavit the plaintiff has stated that the witness shown in I.A. No.9 is having personal

knowledge about the transaction of sale deed and her evidence is necessary for adjudication of the case. Further the plaintiff has sought leave of the Court for furnishing list of witness. The defendant No.1 has stated that already this Court has given sufficient opportunity to the plaintiff to lead evidence. The plaintiff has sought leave of the Court and she has stated that the evidence of witness is necessary to prove her case. Though there is delay in filing the witness list and examine the witness, but plaintiff has stated that the evidence of witness is necessary to substantiate her contention. If the I.A.s are allowed and the defendants are having every right to cross examine the witness by the plaintiff. The plaintiff has approached the court, the burden is on her to prove her case. Therefore looking to the facts and circumstances of the case, if one more chance is given to the plaintiff to lead the evidence of witness it will meet the ends of justice, **accordingly point No.1 is answered in Affirmative.**

10. Point No.2 :- In view of above discussions, I proceed to pass the following;

ORDER

I.A.No. 7 to 9 filed by the plaintiff under section 151 of CPC for reopen of the case and under Order 18 Rule 17 R/w 151 of CPC to lead the further evidence and under Order 16 Rule 1 and 2 of CPC to for permission to file list of witnesses are hereby allowed on cost of Rs.500/- each.

Case is re-opened for further evidence of plaintiff side.

Issue hand summons to witness shown in I.A. No. 9 by hand.

Call on 02-05-2026.

Sd/-

**Prl. Senior Civil Judge & C.J.M,
Karwar.**

REASONS

XXXXXXXXXXXXXXXXXXXXThe plaintiff is filed suit for specific performance of contract against the defendants, when the case was posted for arguments on merits, the defendant has filed these applications stating that already case is posted for arguments on merits, but due to death of his brother Sri.Lagamanna Aragi he was under depression due to this he has not appeared before the court and he is not feeling well and has taken treatment at Shankar Hrudayalaya Vijayapur and Jayadev Hospital Bengaluru and found that he is having heart problem and doctors have advised him to take rest. Therefore it is not possible for him to inform his counsel and nor furnished information for cross examination, but meanwhile court has taken cross examination of PW-1 to PW-4 as nil. The absence of previous date of hearing is neither deliberate nor intentional one.

8. In the affidavit the defendant has stated that due to death of his

brother he was under depression and also he is suffering from heart diseases and taken treatment at Shankar Hrudayalaya and Jayadev Hospital Bengaluru and doctors have advised to taken rest, hence he had not given information to his counsel for cross examination of PW-1 to PW-4. Though the plaintiff has stated that the defendant has not given reasons in the applications and there are no justifiable reasons to allow the applications. The defendant has stated that he was suffering from heart diseases and taken treatment at Vijayapur and Bengaluru and doctors have advised to take rest, hence he was unable to give instructions to his counsel. Hence, looking to the facts and circumstances of the case, if one more chance is given to the defendant for cross examination by imposing cost, it will meet the ends of justice, with a condition that the defendant shall proceed with the case without taking any adjournments, accordingly, point No.1 is answered in the **Affirmative**.

9. Point No.2 :- In view of above discussions, I proceed to pass the following;

ORDER

**I.A.No.10 to 13 filed by the defendant No.1(A)
under section 151 of CPC for reopen of the case and**

under Order 18 Rule 17 R/w 151 of CPC for recall of PW-3 for cross examination are hereby allowed on cost of Rs.700/- each.

Case is re-opened for cross examination of PW-3.

Call on

**Pri. Senior Civil Judge & JMFC,
Jamkhandi.**