

**ORDER ON IA NO.XVII and XVIII**

The plaintiff filed I.A.No.XVII under Order 18 Rule 17 R/w Section 151 of CPC to recall DW 1 for the purpose of cross-examination and I.A.No.XVIII under Section 151 of CPC to set aside the Order dated 11.08.2025 holding that the cross-examination of DW 1 by the plaintiff is hereby taken as nil.

In support of these applications, the plaintiff has sworn to separate affidavits stating that he has filed the suit for partition and separate possession of his 1/3rd share in suit A, B and C schedule properties. He has been examined as PW 1 and closed his side

for time being. On 11.08.2025 the case is posted for the cross-examination of DW 1 by the defendant No.1 and the plaintiff. On that day, he was not present before the Court. During the 2<sup>nd</sup> week of June his Advocate gone abroad and as such his Advocate was also not present before the Court. Hence, the Court passed the Order on 11.08.2025 holding that the cross-examination of DW 1 by the plaintiff is taken as nil. The cross-examination of the DW 1 is very much necessary. If the DW 1 is not recalled for the purpose of cross-examination, he will be put to great hardship and loss. On the other hand, if DW 1 is recalled, no prejudice will be caused to the other side. Hence, these applications are filed.

The learned counsel for defendant no.1 filed objections on I.A.No.XVII and XVIII. In the objections, it is stated that the application is contrary to law and facts. The plaintiff has not explained clear information about his Advocate had gone to abroad. The court has given sufficient opportunity to cross-examine

DW 1 and hence, the Court ordered that the cross-examination of DW 1 by the plaintiff is taken as nil, If really the Advocate for the plaintiff had gone to abroad, then, the Advocate himself has file memo of facts. Hence, it is prayed to dismiss the applications with costs.

Heard and perused the materials on record.

The plaintiff contended that on 11.8.2025 the case was posted for cross-examination of DW 1 by the defendant and plaintiff. On the said date he was not present and his Advocate was also not present because during 2<sup>nd</sup> week of June, his Advocate gone abroad and hence, Court passed the Order holding that the cross-examination of DW 1 is taken as nil by the plaintiff.

On the other hand, defendant no 2 contended that the plaintiff has not given clear information regarding his Advocate gone to abroad and if the Advocate for the plaintiff had gone abroad, then the Advocate himself

has file the memo of facts. The plaintiff has given sufficient opportunity to cross-examine DW 1.

The reason stated by counsel for plaintiff for non-representation on the date fixed for cross examination, appears reasonable and satisfactory. The plaintiff needs to be accorded opportunity to cross examine Dw-1 for the purpose of establishing his contentions and to disprove the contentions of defendants. Cross examination of Dw-1 will enable the court to ascertain the truth with respect to the subject matter of the suit and will assist in just and proper adjudication of the dispute. The objections raised by defendant no 1 is taken in to consideration and if heavy costs is imposed to the plaintiff, then it will meet end of justice. Otherwise this suit is condemned to be unheard. The plaintiff made out grounds for allowing the application. Hence, I proceed to pass the following:

**ORDER**

**I.A No.XVII filed under Order 18 Rule 17 R/w Sec. 151 of CPC and I.A.No.XVIII filed under Section 151 of CPC are hereby allowed on cost of Rs.300/- and DW 1 is hereby recalled for cross-examination by the plaintiff.**

**For cross of DW 1.**

**By: 1.12.2025**

sd/-

**Senior Civil Judge, Ankola**