

KAUK620004762017



**IN THE COURT OF THE ADDL CIVIL JUDGE & JMFC.,
AT HONNAVAR.**

:-PRESENT:-

SRI. IRANNA HUNASHIKATTI.,

B.COM., LL.B.

Addl. Civil Judge & JMFC.,

Honnavar.

Original Suit No. 26/2017.

Dated this 22nd day of November 2024.

Plaintiff/s :- Ramachandra S/o Gajanan Hegde.
Aged about : 55 years,
Occupation: Agriculturist,
R/o Melin Mannige, Bommar village,
Honnavar Taluk (U.K.),

V/s

Defendant/s :- Lokesh S/o Ganapayya Naik & Others.
Aged about : 40 years,
R/o Melin Mannige, Bommar village,
Honnavar Taluk (U.K.),

IA No. VI

Applicant/ :- Lokesh S/o Ganapayya Naik & Others.
Defendants

(By Sri. H.U.N., Advocate)

V/s

Opponent/s :- Ramachandra S/o Gajanan Hegde.
Plaintiff

(By Sri .G.P.H., Advocates)

ORDERS ON I.A. No. VI.

The defendant has filed this application under order XVIII Rule 17 of CPC, for seeking permission of this court to recall the PW1 for cross examination.

2. The I.A. No. VI is supported with the affidavit of the defendant No. 1, wherein he deposed that, he has not instructed his counsel to conduct the cross examination of PW1. Further stated that, now it is very essential to conduct cross examination of PW1 in the present case. It is stated that, if this application is allowed, no loss or hardship will be caused to the other side and on the contrary, if the said application is rejected, then the defendants will be put to hardship. **With these averments the defendant No.1 has sought for allowing the I.A. No. VI.**

3. The learned counsel for the plaintiff has filed objection by denying averments of this application and further stated that the application filed by the defendants is not maintainable under law. Further contended that, in spite of sufficient opportunities counsel for defendants not conducted cross examination of PW1. **With these contentions, the plaintiff has sought for rejection of I.A.No.VI.**

4. Heard both side counsels on I.A. No. VI.

5. The following points would arise for consideration:-

1. Whether IA No. VI filed by the defendants is deserved to be allowed?
2. What order?

6. Based on the contents of the present application and objection raised by the defendant and also materials on hand, the aforementioned points are answered as under:-

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

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

:-REASONS:-

7. **Point No. 1** :- The plaintiff has filed the present suit for the relief of permanent injunction with regard to suit schedule properties.

8. The learned counsel for the defendants stated that, it is necessary to conduct cross examination of PW1 and also provide an opportunity to conduct the cross examination of PW1 in order to adjudicate the matter on merits. Further submits that, if the application is allowed no harm will be caused other side, if the application is not allowed then the defendants will be put great hardship and injustice. Hence,

prays to allow the application.

9. The counsel for plaintiff submits that, the defendants have not explained sufficient and proper reasons to allow the present application.

10. On perusal of the entire order sheet, it is noticed that, the case was posted for cross-examination of PW1 on 15-09-2023, 05-10-2023 and last on 04-11-2023 the cross of PW1 is taken as nil. Thereafter the defendant evidence was taken as nil and case was posted for arguments. Thereafter the defendants was filed present application before the court.

11. On going through materials available on record, this court is opinion that, in order to give fullest opportunity to the parties to put forth their cases, it is just and necessary to recall the PW1 for cross examination by allowing the application. In the interest of justice and equity and keeping in mind the principles of natural justice and also determining the rights of parties on merits, it is necessary to allow the application filed by the defendants. To meet the ends of justice, the application has to be viewed liberally and some cost has to be awarded to the plaintiff.

12. From going through above discussion, circumstances and materials on the hand, this court has come to conclusion that the application filed by the defendants is deserved to be allowed. **With these observations, this Court has answered Point No.1 in the Affirmative.**

13. Point No. 2 :- For the reasons discussed above, proceed to pass the following;

ORDER

IA No. VI filed by the defendants U/o XVIII Rule 17 of C.P.C., is hereby allowed by imposing cost of Rs.1,000/-.

Cost must be paid to PW1 on next date of hearing without fail.

Accordingly case is reopened for further cross of PW1. Defendants have to cross examine PW1 without seeking any more adjournments.

*(Typed by me in my laptop, corrected and then pronounced by me in the open Court, on this the **22nd day of November, 2024**)*

(IRANNA HUNASHIKATTI)
Addl. Civil Judge & JMFC.,
Honnavar.
