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**IN THE COURT OF THE SENIOR CIVIL JUDGE & PRL.
JMFC., KUMTA, AT; KUMTA, UTTARA KANNADA**

Dated this the 5th day of June, 2026

PRESENT

**Smt. B.S.Rayannawar, B.A., L.L.B.,
Senior Civil Judge
& Prl. JMFC, Kumta.**

O.S.No.17/2021

BETWEEN:

Sri. Chandrakant S/o Dattatraya Gopi
@ Bhattagopi and others

...Plaintiffs

V/s.

AND:

Sri. Yogaraj S/o Dattatraya Gopi
@ Bhattagopi and others

...Defendants.

IA.NO.XIX to XXI

BETWEEN:

Sri. Chandrakant S/o Dattatraya Gopi
@ Bhattagopi and others

.....Applicant/Petitioner.

(Rep.by Sri. N.M.N.-Advocate)

V/s.

AND:

Sri. Yogaraj S/o Dattatraya Gopi
@ Bhattagopi and others

...Opponents/Defendant no.2.

(Rep.by Sri. S.V.A.-Advocate)

Provision	U/s. XVIII rule 17 R/w. 151 of CPC and U/s. 16 Rule 1 R/w. 151 of CPC
Relief sought for	To Reopen and recall
Application dated	25-02-2026
Application No.	XIX, XX, XXI
Objection filed on	25-03-2026
Order passed on	05-06-2026

Common Orders on I.A.Nos. XIX to XXI

Present I.A.No.XIX to I.A.No. XXI filed by the plaintiff U/s. XVIII rule 17 R/w. 151 of CPC and U/s. 16 Rule 1 R/w. 151 of CPC with an prayer to reopen and recall witness for the purpose of cross examination of Advocate Sri.P.G. Hegade who notarized document Ex.D.1 and Ex.D.2 and Sri.Balachnadra S Markande, who identified the documents.

2. I.A.Nos.XIX, XX and XXI supported with Affidavit of applicant/plaintiff stating that, he filed present suit against the defendants seeking declaration and partition of suit schedule properties. The 2nd defendant alienated portion of land in 'A' schedule property to defendants No. 3 to 8 and 10 under sale deed on the basis of Ex.D-1 and Ex.D-2. Likewise the defendant no.9 also alienated 'B' schedule property infavour of defendant no.11, the defendant no.2 and defendant no.9 alienated the properties without the consent of plaintiffs. The plaintiffs have given Ex.D.1 and Ex.D.2 to develop the land and not for alienation. The said documents are notarized before Sri.P.G.H Advocate and the person who identified the documents. Hence the cross examination of these persons is very much necessary to prove their case. Hence if the application is allowed no injustice or inconvenience will be caused to defendants, on the other hand, if the application is not allowed great injustice and inconvenience will be caused to him. Hence, prayed to allow the applications.

3. Applications opposed by defendant no.2 by filing written objections, contending that, the applications at IA No. 19 to 21 are contrary to law and facts involved in the case and said IA's are not maintainable at this stage. The contents/averments made by the plaintiff in affidavits are denied the toto.

4. Earlier the present case is posted for arguments. However, the case was opened for cross examination of DW1. Further, the plaintiffs have moved these IA's for recall and reopen the file and to lead evidence which is not permissible under law.

5. Moreover the general power of attorney's at Ex.D1 and Ex.D2, were marked by confronting the said documents to PW-1 plaintiff. Moreover, PW1 has admitted the said GPA at Ex.D1 and Ex.D2, while he was in witness box under such circumstances there is no question of cross-examination of said witnesses i.e. notary advocate and Identifier. No fruitful purpose will be served, if witnesses are summoned for cross

examination. The said IA's are filed with malafide intention to protect the case. Hence prays to reject the applications.

6. Heard both respective counsel for plaintiff and defendant no.2.

7. Perused applications, annexed affidavit, objections and other material on record. The points arise for my consideration are ;

1. Whether the plaintiffs have made out ground to allow the I.A.No.XIX, XX and XXI?

2. What order?

8. My findings on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : As per final order

For the following:

REASONS

9. **Point No.1**: Plaintiffs have filed this suit against the defendants for declaration and partition. Now the case is posted for arguments, at this stage plaintiffs filed present applications to reopen and recall the case for cross examination of Advocate who notarized the GPA and who identified the signature.

10. Generally GPA proved by its expectant who grants the power, after verified and authenticated by a notary public. but is the contention of plaintiff that, plaintiffs and their mother executed the General Power of Attorney in favour of defendant no.2 for the purposes mentioned in Ex.D.1 and Ex.D.2 except executing the sale deeds. They have not given power of attorney to defendant no.2 to sell the properties, hence by calling up the witness the plaintiff intends to prove that the contents of GPA. Under Section 85 of the Indian Evidence Act a court is legally required to presume that a GPA executed before an authentic by a Notary Public is genuine and was properly executed. But in this case the plaintiffs challenging the contents of GPA, the power given to the power of attorney holder, it is the contention of plaintiff that they have given power only to develop their land and not given power to alienate the land. Hence the plaintiffs intends to clarify the same by examining the notary. Hence if the application is allowed no hardship will be caused to the defendants. Hence to meet out the ends of justice and for striking balance between the interest of the parties. It is just and proper to call the

witnesses for the purpose of further cross examination. Hence point no.1 answered in the Affirmative.

11. **Point No.2:** In view of above discussions, I proceed to pass the following:

ORDER

I.A.Nos.XIX, XX and XI filed by the applicant/ plaintiffs Under order 18 Rule 17 R/w. 151 of CPC and U/o. 16 Rule 1 R/w. 151 of CPC are hereby allowed on cost of Rs.200/- each payable to witnesses.

Office to issue summons to witnesses shown in I.A.No.XXI.

(Directly dictated to the stenographer to the computer, corrected and then pronounced by me in the open Court on this the 5th day of June, 2026)

(Smt. B.S.Rayannawar)
Senior Civil Judge
& Prl. JMFC., Kumta.