

ORDERS

The plaintiff has filed I.A. under Order XVIII Rule 17 r/w Sec.151 of C.P.C. praying this court to recall D.W.1 for the purpose of cross – examination. The application is supported by memorandum of facts and after going through the memorandum of facts it can be seen that the plaintiff has changed the counsel and D.W.1 is not effectively cross – examined and material questions regarding truth, genuineness, validity and binding nature of alleged Will is not being put and if the witness is not further cross – examined much prejudice will be caused to the plaintiff. Hence, prays to allow the application.

Objections filed by the 7th defendant wherein it is submitted that the application is devoid of merits and only to fill the lacuna and prolong the proceedings the said application is filed. Hence, prays to dismiss the application.

Heard on both sides.

The stage is set down for cross of D.W.1 by defendant No.2, 3, 4 to 6 and now the plaintiff has changed the counsel and intends to cross – examine the D.W.1. At this stage of discussion this court likes to place reliance upon State NCT of Delhi Vs. Shivkumar Yadav (2016) 2 SCC 402, wherein it is held that, mere change of counsel cannot be a ground to recall a witness. There has

to be a bonafide reason for the same. Further, at this juncture of discussion, this court likes to place reliance upon M/S. Steel Rocks in Vs. M/S. Bangalore Elevated Toll Way Pvt. Ltd., wherein the Hon'ble High Court of Karnataka has also held that, mere change of counsel cannot be a ground to recall the witness. The application was contained details as to why the witness is required to be recalled.

Having gone through the above judgments in detail this court is of the opinion that, it is aptly applicable to the case on hand and the grounds taken in the application supported by memorandum of facts is devoid of merits and holds no bonafide reason to recall the witness to cross – examine by the plaintiff. So therefore, this court proceeds to pass the following:

ORDER

Application filed under Order XVIII Rule 17 r/w Sec.151 of C.P.C. stands dismissed.

Call for cross of D.W.1 by defendant No.2, 3, 4 to 6 by 10.03.2025.

Addl. Senior Civil Judge & A.C.J.M.
Udupi.