

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,

KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 27th day of June, 2025.

O.S.No.67/2017

Smt. Rathnamma and others. ..Plaintiffs
Versus -
Sri. Namiraja Pandi and others ..Defendants

PARTIES TO I.A.NO.35

1. Smt. Rathnamma
Aged 74 years,
W/o. Late Devaraj Jain,
R/at. Rajagiri House, Kanchana Village
and Post, Via Uppinangady,
Puttur Taluk, D.K. District.
2. Smt. Saraswathi,
Aged 71 years,
W/o. Prabhakara Athikari,
D/o. Jinnappa Hegde,
R/at. Shanthinilaya, Jayanthinagara,
6th Cross, Kukkundoor Village,
Karkala Taluk, Udupi District.
3. Mrs. Surekha V. Hegde,
Aged 46 years,
D/o. Late Sumanaji Amma,
W/o. Vijay Kumar Hegde,
R/at. Padmavarna, Post Kallabettu,
Gantalkatte, Moodabidri,
Mangalore Taluk, D.K. District.
4. Mrs. Sujatha Shivakumar,

Aged 40 years,
D/o. Late Sumajani Amma,
W/o. Shivakumar,
R/at. Kurpady House, Ajekar,
Marne Village, Karkala Taluk,
Udupi District.

.. Applicants/plaintiffs

- vs. -

1. Sri. Namiraja Pandi,
Aged 84 years,
S/. Jinnappa Hegde,
R/at. Chikkalbettu, Sanur Village,
Karkala Taluk, Udupi District.
2. Smt. Vijaya,
Aged 55 years,
W/o. Late Shridhar Pandi,
3. Mrs. Shreesha,
Aged 36 years,
D/o. Late Shridhar Pandi,
4. Mr. Shrikanth,
Aged 32 years,
S/o. Late Shridhar Pandi,

No.1 to 3 are R/at. Aidhkolu House,
Irvathoor Village, Karkala Taluk,
Udupi District.

5. Mr. Sunil,
Aged 43 years,
S/o. Sumanaji Amma,
R/at. Subhodh Mahal, Padangady,
Belthangady Taluk, D.K. District.
6. Mr. Sudhir Kumar,
Aged 48 years,
S/o. Sumanaji Amma,
R/a. Ira Enclave, 3rd Floor,

Opp G. V. Pai Hospital,
Moodabidri, Mangalore Taluk,
D.K. District.

7/. Mr. Achutha Shivappa Shetty,
Aged 60 years,
S/o. Late Shivappa Shetty,
R/at. Sujatha Nivas, Iruvathuru
Village, Karkala Taluk, Udipi District. Opponents/defendants

i.	Provision under which the application is filed	Section 151 of CPC
ii.	Relief sought for	To recall order dated 19-06-2025
iii.	The date on which the application is filed	24-06-2025
iv.	Number of the application	I.A.No.35
v.	The date on which the objections are filed by different opponents	25-06-2025
vi.	The date on which the orders were passed on the said application.	27-06-2025

ORDER ON I.A.NO.35 FILED UNDER SECTION 151 OF

C.P.C.

Application is filed by plaintiffs seeking recalling of the order passed by this court dated 19-06-2025.

2. In the memorandum of facts it is stated that on 19-06-2025 this court passed order to pay the cost to defendant No.1 and on 20-06-2025 additional written statement of the

defendant No.1 and 7 was received. That the defendant No.2 and 7 have no authority to file additional written statement and that the cost imposed on defendants No.2 to 4 is liable to be recalled and prays to allow the application.

3. Counsel for defendant No.1 filed objections and submits that there is malafide intention on the part of the plaintiffs and for other detailed reasons, prays to reject the application.

4. Counsel for defendant No.7 adopts the objection filed by defendant No.1.

5. Heard from the counsel for plaintiffs and counsels the defendants .

6. The following point arise for my determination.

“Whether there are sufficient grounds made out to recall the order passed by this court on 19-06-2025 and 20-06-2025?”

7. My answer to the above point is in ‘negative’,
for the following

REASONS

8. The present suit is for partition of the suit properties, which is pertaining to the year 2017. The parties have dragged on the matter on the guise of settlement in between the parties. But however this court proceeded with the case and cross-examination of P.W.1 was completed . Now when the defendant No.1 was to be examined, commissioner was appointed in view of his ailment to appear before this court personally. Thus after lapse of nearly 7½ years , counsel for defendants No.2 to 4 filed I.A. No.34 along with written statement, which came to be allowed vide order of this court dated 19-06-2025, by imposing cost upon the defendants No.2 to 4 , to be paid to the defendant No.1. Now the counsel for the plaintiffs has filed the present application seeking recalling of the said order.

9. It would be pertinent to note that the counsel for the plaintiffs neither appeared before this court, nor somebody was representing on behalf of the plaintiffs. Neither the plaintiffs filed objections to I.A.No.34 filed by defendants No.2 to 4,

which was only opposed by the counsel for defendant No.1 submitting that the stage is for cross-examination of defendant No.1. Now when the cost of Rs.7,000/- was imposed upon the defendants No.2 to 4 to be paid to the defendant No.1, plaintiffs counsel appeared before the court and submits that defendant No.1 has nothing to do with the written statement of defendants No.2 to 4. It was also argued by the counsel for the plaintiffs that defendants No.2 to 4 are sailing with the defendant No.1 and the cost cannot be ordered to be paid to the defendant No.1. It would be relevant to note that in the absence of the plaintiffs and plaintiffs' counsel, as submitted by defendants No.2 to 4, they were under the impression that the matter would be settled between the parties. Therefore, somewhere it appeared that the defendants No.2 to 4 and the plaintiffs were sailing with each other. However on going through the written statement of the defendants No.2 to 4, this court could note that the defendants No.2 to 4 are claiming 1/3rd share in the suit property, as against the claim of the defendant No.1. Mere words stating that the suit has to be dismissed does not come in the way of the order to consider

that the defendants No.2 to 4 are not sailing with the plaintiff. However after filing of the written statement, counsel for the defendant No.1 submitted the contradictions where the death of the father of the plaintiffs and defendants itself was disputed and that a new question arose regarding the application of the Act i.e., whether this court has to partition the property as per the Jains Act or as per the Hindu Succession Act . Therefore it appears that this claim of the defendants was to be opposed and the counsel for the defendant No.1 prayed for an opportunity to file the written statement.

10. It is a general rule of law that written statement does not attract another written statement. However in the absence of the pleadings, the parties cannot put up their defence during the cross-examination. Therefore an opportunity has to be provided to the defendant to file their pleading, which was termed as 'written statement'. Until and unless the counsel for the plaintiffs did not appear before the court , but who came up and put up his objections that this court is passing wrong orders and seeks for payment of cost of Rs.7,000/- to the plaintiffs. The heat of the argument between the counsels went

too far , where counsel for defendant No.1 urges that defendant No.1 is aged about 89 + years and is suffering from serious ill-health. It was further argued that the counsel for the plaintiffs is only trying to drag the matter unless and until defendant No.1 dies and his legal representatives are brought on record. This court cannot go into the details of those arguments. But the point which has to be brought to the notice of the parties and the respective counsels is that the parties to the suit are the senior citizens, who will not be able to enjoy their properties , if the matter is dragged on and this will serve no purpose. This is one of the oldest lis before this court. Therefore, merely with the intention to give a proper relief to all the senior citizens in the suit and with the intention to proceed with the matter, the parties and their respective counsels are directed to proceed with the case and to put up their appearance properly.

11. At this stage this court cannot recall its own order, where the counsel for the plaintiffs failed to file objection to the I.A. No.34 filed by the defendants No.2 to 4, therefore, after passing the order, cannot object the order passed by this court, but has to challenge before the proper and higher authority.

Therefore, this urge of the counsel for the plaintiffs does not hold any water and the application seems to be only to drag on the matter, without any purpose. The law cannot extend its helping hand to the parties who fails to properly represent before this court.

12. At this stage the counsel for the defendants seeks an order of this court regarding the hierarchy for cross-examination of the D.W.1 . The commissioner was appointed and D.W.1 has already filed his affidavit and has to be cross-examined. The counsel for the plaintiffs urges that he would cross-examine only upon the cross-examination of the defendants No.2 to 4. Defendants No.2 to 4 are neither sailing with the defendant No.1 nor with the plaintiffs. But when the defendants No.2 to 4 are considered as against the claim of the plaintiffs , it is the defendants No.2 to 4 who needs to cross-examine the D.W.1 first , and the hierarchy continues. This application seems to be only to waste the time of this court and drag on the matter without proper reasons. Thus holding that there are no sufficient grounds made out by the plaintiffs for recalling the order of this court, the above point is answered in negative.

13. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No.35 filed by the plaintiffs under Section 151 of C.P.C., is here with rejected with cost of Rs.500/- to be paid to defendant No.1.

(Dictated to the Stenographer, transcribed by her , transcript corrected and then pronounced in Open Court on this the 27th day of June, 2025.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala