

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 10th day of September, 2025.

O.S. No.67/2017

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

PARTIES TO I.A.NO.36

1. Smt. Vijaya,
Aged 55 years,
W/o. Late Shridhar Pandi,
2. Mrs. Shreesha,
Aged 36 years,
D/o. Late Shridhar Pandi,
3. 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.

.. Applicants/
Defendant 2 to 4

- VS. -

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.

.. Opponents/plaintiffs

i.	Provision under which the application is filed	Order XVIII Rule 17 and Section 151 of CPC
ii.	Relief sought for	To reopen the evidence of plaintiff and recall P.W.2 for cross-examination by defendants No.2 to 4.
iii.	The date on which the application is filed	02-09-2025
iv.	Number of the application	I.A.No.36
v.	The date on which the objections are filed by different opponents	P: 03-09-2025 D1 & 7: 04-09-2025
vi.	The date on which the orders were passed on the said application.	10-09-2025

COMMON ORDER ON I.A.NO. 36 UNDER ORDER XVIII
RULE 17 AND SECTION 151 OF C.P.C., AND MEMO

I.A.No.36 and memo are taken up together for common discussion since they are inter-connected and attracts same reasoning.

2. I.A.No.36 is filed by the defendant No.2 o 4 seeking reopening of the case of the plaintiffs and recall P.W.2 for the purpose of his cross-examination by defendants No.2 to 4.

3. Defendant No.2 deposes that she had filed the written statement after conclusion of cross-examination of P.W.2 by the defendant No. 1 and hence her advocate could not cross-examine P.W.2. that no prejudice will be caused to the other side and prays to allow the application.

4. Per contra counsel for the plaintiffs objects that the applicants are hand-in-glove with the defendant No.1 , with intention to harass P.W.2, has filed present application. That P.W.2 has been cross-examined at length. That there are no sufficient reasons to recall P.W.2. That both of them are claiming partition based upon Jain Succession Act and the defendants No.2 to 4 are at liberty to adopt the cross-

examination by defendant No.1 and prays to reject the application.

5. 1st defendant has filed objections seeking to keep the I.A., in abeyance till the conclusion of the cross-examination of D.W.1, in view of his advancing age and deteriorating health. That the application is filed only to get over the admissions made by P.W.2 in his cross-examination, which is not permissible and prays to reject the application with costs.

6. Counsel for the defendant No.7 files memo adopting the objections filed by defendant No.1 as his objections to I.A.No.36.

7. It would be relevant to note that the cross-examination of D.W.1 was being proceeded, where the court commissioner was appointed alleging that D.W.1 was unable to move. The court commissioner got advanced the case and files memo in order to decide as to who has to cross-examine D.W.1 first. In the meantime, the counsel for the defendants No.2 to 4 has filed this application.

8. Thus the case is taken up to pronounce the order on I.A.No.36 and also memo filed by the court commissioner.

9. Heard from the counsel for plaintiffs and counsel for defendants No. 1 to 4.

10. The following point arise for determination.

1) Whether the P.W.2 needs to be recalled?

2) What order on the memo?

11. My answer to the above points is

Point No.1 – In affirmative,

Point No.2 – As per final order,

for the following

REASONS

12. **Point No.1 and 2:-** These points are taken up together for common discussion, since they involve same set of facts and evidence and common reasonings.

13. This is a suit for partition filed in the year 2017. The matter was dragged on only on the guise that the parties have settled the matter. However by the oral submission of the

counsel for the defendants, this court could note that there is also a case pending before Hon'ble Civil Judge Court Moodabidri which also needs to be settled by the parties and only on the settlement of the said case, the instant case could have been reported to be settled. However the parties in spite of providing sufficient time, did not report the settlement. The cross-examination of plaintiffs was completed at the instigation of this court to proceed as this was the oldest matter, the evidence of the defendant No.1 was taken up where the Advocate Sri. Sampath Kumar Shetty N., was appointed as court commissioner to record the evidence. The chief examination was lead and the counsel for the defendants No.2 to 4 filed the written statement at this stage. There was an order by this court on 17-06-2025 allowing the written statement and cost of Rs.7,000/- was imposed to be paid to the 1st defendant, for which counsel for the plaintiffs objected for handing over the cost to the 1st defendant. That on 20-06-2025 defendant No.2 filed additional written statement and the case was posted for cross-examination of D.W.1. Admittedly 1st defendant is one of the senior advocate practicing before this

court, which is not disputed either by the plaintiffs or by the defendants. It is also not in dispute that the 1st defendant is immobile and is unable to get out of the wheeler chair and thus this court in order to record the evidence of D.W.1, court commissioner was appointed. Now after the chief examination of D.W.1, where there was a direction to the court commissioner to record the evidence as soon as possible, the counsels for the plaintiffs and defendants No.2 to 4 have objected for the same and are adjourning the matter by seeking time on one or the other pretext and now has raised up a new defence that D.W.1 should be cross-examined firstly by the plaintiffs or by the defendants No.2 to 4. As per the plaintiffs, it is the defendants No.2 to 4 who are in collusion with the 1st defendant, where both of them are seeking partition under Jain Succession Act, whereas the counsel for the defendants No.2 to 4 objects that the plaintiffs and defendant No.1 are hand-in-glove with each other. However counsel for the defendants No.2 to 4 argues that she has to be provided with an opportunity to cross-examine P.W.2 first .

14. It would again be pertinent to note that the parties to the suit are senior citizens. The general rule of law is that the senior citizens are to be given first importance. P.W.1 is also senior most citizen. However, while she was being subjected to cross-examination, it appears that on the date of her appearance before the court, P.W.1 fell ill and was unable to appear before the court. Thus the General Power of attorney holder of the plaintiff was examined as P.W.2 after several adjournments, which is causing delay .

15. An order was passed by this court while taking the written statement of defendants No.2 to 4 on record, i.e., on 17-06-2025. Even after that, the counsel for the defendants No.2 to 4 never tried to file the present application i.e., I.A.No.36 seeking recall of P.W.2 for cross-examination. The delay caused by the counsel for the plaintiffs and the counsel for the defendants No.2 to 4 is already discussed by this court while passing order on I.A.No.34 and 35, which need not be repeated again and again. It is again pertinent to note that the application was filed when this court proceeded to hear as to who has to cross-examine D.W.1 at the first instance i.e., after

lapse of nearly two months from the date of the order. There is no reason assigned by the defendant No.2 while deposing in her affidavit as to the delay caused in filing of the present application, which means that the counsel for the defendants No.2 to 4 has admitted to proceed with the case by cross-examining D.W.1. It was argued by the counsel for the defendants No.2 to 4 that unless and until P.W.2 is cross-examined, she cannot cross-examine D.W.1. In order to take up the said defence the defendants No.2 to 4 ought to had been conscious and ought to had made efforts at the proper time. The arguments of the learned counsel for the defendants No.2 to 4 that since the matter was being settled, they could not file the application in time and that she has to be provided with an opportunity to cross-examine P.W.2 at the first instance, does not hold any water at this stage. However, the defendants No.2 to 4 cannot be denied with the opportunity of cross-examining P.W.2. But considering the seniority of the P.W.2 and D.W.1 and the ill-health, age, the D.W.1 needs to be prioritized first. Therefore, this court is of the considered opinion that the counsel for the

plaintiffs and the defendants No.2 to 4 shall cross-examine D.W.1, who is immobile, suffering with ill-health and is the most senior of the parties to the suit , and then the defendants No.2 to 4 shall be provided with the opportunity to cross-examine P.W.2.

16. The counsel for te plaintiffs and the defendants No.2 to 4 have adjourned the cross-examination on the guise that other party has to cross-examine D.W.1 at the first instance. As per the order, it is the plaintiffs who has to first cross-examine. Even while passing orders on I.A.no.34, filed by the defendants No.2 to 4, this court has observed the fact that the 2nd defendant is sailing with the plaintiffs in claiming the share. Therefore, the allegation by the counsel for the plaintiffs who filed objections to the memo and submits that the defendants No.2 to 4 , are sailing with the defendants No.1 , who are claiming the shares as per the Jain Succession Act, does not hold any water. Therefore this court has considered to give direction to the plaintiffs to cross-examine first , followed by the cross-examination by defendants No.2 to 4. In this situation, when there was an observation by this court, the

adjournments which is sought for by the plaintiffs and defendants No.2 to 4 and also the filing of written statement after lapse of 7 years of filing of the application at belated stage, nearly after 1 ½ months, is nothing but to avoid the process of the court in proceeding with the case. It is also brought out by the counsel for the defendant No.1 that the cost of Rs.7,000/- as ordered by this court, is not paid. As per order of this court dated 17-06-2025, I.A.No.34 filed by the defendants No.2 to 4 was allowed with cost of Rs.7,000/-, which means that the written statement of defendants No.2 to 4 would be considered only subject to payment of cost. When the defendants No.2 to 4 have not complied with the order of this court, the written statement cannot be considered at all, where the defendants No.2 to 4 would have no defence. In the interest of justice and equity, I.A.No.36 filed by the defendants No.2 to 4 is to be allowed, it would be only after cross-examination of D.W.1 first by the counsel for the plaintiffs and later by the counsel for the defendants No.2 to 4, subject to payment of cost of Rs.7,000/-.

17. In this regard, the court commissioner also needs to be given a direction, since the matter is pertaining to the year 2017. The court commissioner has to fix a date for cross-examination of D.W.1 and has to submit the report within the date fixed by this court, failing the court commissioner shall report non-cross-examination of D.W.1 by the parties. Accordingly Point No.1 is answered in affirmative.

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

ORDER

I.A.No.36 filed by the defendant No.2 to 4 under Order XVIII Rule 17 and Section 151 of C.P.C., is herewith allowed with cost of Rs.500/- .

P.W.2 is recalled for cross-examination , after filing of report by the court commissioner with regard to cross-examination of D.W.1.

Issue direction to the court commissioner to furnish the report within 08-10-2025, complying with the observation made above.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 10th day of September , 2025.)

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