

27-02-2026

ORDERS ON MEMO

Counsel for the plaintiffs filed memo on 24-02-2026 seeking to post the case for rebuttal evidence of the plaintiffs.

In the memo it is stated that Issues No.2 to 4 have been framed casting burden on the defendant No.1, Issue No.6 has been framed casting burden on the defendant No.7, additional issues No.1 and 2 have been framed casting burden on the

defendants No.2 to 4, where the plaintiffs have rebuttal evidence on the above mentioned issues, which are casting burden on the defendants. Thus prays to permit them to lead rebuttal evidence.

Per contra, counsel for the 1st defendant objects that the memo is after thought and to get over the unambiguous admissions made by the P.W.2 in the witness box. That there is no fresh cause of action and for other reasons prays to reject the memo.

Counsel for the defendant No.7 by filing memo adopted the objection filed by the defendant No.1.

Heard from the counsel for the plaintiffs and defendants.

The following point arise for my determination.

“Whether the plaintiffs can be permitted to lead rebuttal evidence?”

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

REASONS

The suit is one for partition of the suit schedule properties, where the plaintiffs took several adjournments to lead the evidence. However, there was a direction from the Hon'ble High Court of Karnataka to dispose off the matter within three months. Thus the plaintiffs proceeded to lead the evidence and the defendants also have lead the evidence. Now the plaintiffs , by filing a memo, are seeking permission to lead rebuttal evidence on the issues framed by this court, which burdened the defendants to prove the contentions.

At the first instance, this court has repeatedly stated that memo is only to provide information to the court and the parties cannot seek any relief through the memo.

Further, as per the plaintiffs, the defendants have already lead the evidence and now the plaintiffs wants to lead the rebuttal evidence, for which the counsel for the plaintiffs has relied upon

Order 18 Rule 3 of C.P.C. To support his contention the counsel for the plaintiffs has filed notes of arguments and relied upon the authority of Hon'ble High Court of Karnataka reported in

1981 1 Karnatakala Law Journal 134, in 'B H Ravindra Pai Vs. K. Sulochana Bhandarkar'.

As per the above authority, when the issues have been framed casting burden on the defendants, the plaintiffs got every right to lead rebuttal evidence on those issues. A careful perusal of the above judgment of Hon'ble High Court goes to show that the Hon'ble High Court has permitted the plaintiffs to lead rebuttal evidence. But it would be pertinent to note that the plaintiffs in the said case had earlier filed memo reserving their right to produce rebuttal evidence on the issues No.2 and 3, which is not seen in the instant case. It is only after the conclusion of the evidence of the defendants, the plaintiffs are seeking permission to lead rebuttal evidence on the issues.

Further it is stated in the written arguments that just because there is direction by the Hon'ble High Court of Karnataka, it does not mean that the right of the parties to lead the evidence should be nipped off at the bud. That the maximum opportunity needs to be given to the parties and the right to lead evidence cannot be curbed on technical grounds. It is also stated that if the time stipulated by the Hon'ble High Court of Karnataka is not sufficient, this court can very well place representation to the Hon'ble High Court of Karnataka to extend the time. When the order sheet before this court clearly shows the allegation that the plaintiffs have been attempting to delay the disposal of the suit is not correct.

It would also be pertinent to note here that the efforts are made by the plaintiffs to seek stay of the proceedings, also have challenged the order passed by this court before the Hon'ble High Court of Karnataka, where the Hon'ble High court has

clearly observed that the parties to the suit are the senior citizens. Therefore, the delay of nearly 1 ½ years , since this court took over the charge from 2023, has been explained and question of alleging that the plaintiffs have been attempting to delay the disposal of the suit does not arise at this stage.

The only fact that has to be considered is whether the plaintiffs are entitled to lead the rebuttal evidence. The issues and additional issues were framed by this court even prior to the evidence of the plaintiffs. The cross-examination of P.W.1 and 2 were concluded and there was bounden duty upon the plaintiffs to have sought for permission to lead the rebuttal evidence at the closure of the evidence of the plaintiffs, which is not done so. In this regard counsel for the 1st defendant also relies upon the authorities of Hon'ble High Courts reported in

1) AIR 1971 Mysore 17 in S. Chandra Keerti Vs. Abdul Gaffar and others',

2) (2012 3 Mah L J 143 ‘ in Shahnawazkhan S/o. Abdul Raihmankhan Vs. Azarunnisa Begum W/o. Mohd. Abdul Rauf and others,

3) 1978 Online Bombay 61 in Nipendrachandra Bid Vs. Rajaramka Pulp and Paper Mills, where it is held,

“Option under Order 18 Rule 3 – If the plaintiff begins the evidence, the plaintiff can answer the issue where the burden is on the defendant by adducing evidence – Alternatively he may not adduce evidence but can reserve his right to answer and rebut the evidence adduced by the other party – Rule is silent about at what stage application is to be moved – However it is appropriate that the plaintiff should move the application of reserving his right to answer and rebut the evidence of other party in respect of such issue before defendant enters the box or he puts witness in the box or at the time when plaintiff closes his or her evidence- It is necessary that the other party should be made aware before he or she steps in the box and adduce his or her evidence.”

Thus from the above authorities, the fact that can be considered is that the defendants should be made known that the plaintiffs are intending to lead the

rebuttal evidence with regard to the issues framed burdening the defendants. This information from the plaintiffs to the defendants would enable the defendants to lead proper and effective evidence. Now on the other hand, if the plaintiffs intends to lead the rebuttal evidence without making known to the other defendants, chances of multiplicity of the proceedings would be more, where the defendants can further seek time and opportunity to lead the rebuttal evidence to the evidence of the plaintiffs. The very purpose of filing of a memo and reserving their rights to lead the rebuttal evidence, after conclusion of the evidence of the defendants, would be only to enable the parties to be prepared regarding the evidence which is to be lead in rebuttal.

Order 18 Rule 3 of C.P.C., emphasizes upon the fact as to who has to lead the evidence and in what order. When the evidence is completed, if the plaintiffs have not sought for rebuttal, they cannot straight away go and file memo that they want to

lead the evidence. Filing of a memo after conclusion of evidence of the defendants, is nothing but abuse of the process of law, where the plaintiffs are not seeking any permission , directing the court to reserve the right to lead the rebuttal evidence. Therefore, this memo is filed by the plaintiffs does not hold any water .

The court has to again remind the plaintiffs and the defendants that the court can seek extension of time if the court could not complete the process within the specified time, but only on that ground, neither the plaintiffs nor the defendants are expected to prolong the matter, which rule applies to both the parties. There is also an observation of the Hon'ble High Court of Karnataka in the writ petition filed by the plaintiffs that both the parties and the counsels have to co-operate with the disposal of the suit and the counsels have to see that the matter is not adjourned for unnecessary reasons. Accordingly holding that the plaintiffs can

not be permitted to lead rebuttal evidence, the above point is answered in negative.

Hence the following:-

ORDER

Memo dated 24-02-2026 filed by plaintiffs is herewith rejected.

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