

ORDER ON I.A.No.VII to VIII

The defendant has filed the I.A.No.VII under Section 151 of CPC., I.A.No.VIII U/o.18 Rule 17 of CPC., to recall the DW1 for further examination in chief.

2. In the accompanying affidavits to the applications, it is stated by the defendant that due to ill-health she was not appear before the Court on the previous date of hearing, therefore further examination in chief of DW1 is taken as NIL. Therefore it is just and necessary to recall the DW1, for further examination in chief. If the said applications are allowed no injustice will be caused to the other side. If the applications are not allowed she will be put to hardship. Hence she prays to allow the applications.

3. To the said applications the plaintiff has filed the objection and denied the contention of the defendant and further contended that, defendant with an intention to drag on the proceedings file the false applications. In the present case on hand the defendant has not produced any registered gift deed before the Court, she has created the alleged gift deed, now for marking the said alleged gift deed, the defendant has filed the said applications same are not maintainable. The defendant has created the gift deed in the stamp paper of Rs.3/-. The said unregistered gift deed cannot be marked in the evidence. Hence, she prays to dismiss the same.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

1 . Whether the defendant has made out proper grounds to allow the said IA Nos.VII to VIII?

2 . What order?

6. My answers to the above points are as under:

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : As per final order for the following: -

REASONS

7. **Point No.1:-** The present suit is filed by the plaintiff against the defendant for the relief of declaration of title and Permanent Injunction with respect of suit schedule property. In the present case on hand, on 02.09.2022 further examination of DW1 taken as NIL. Later on 20.09.2022 I.A.No.6 filed with regard to payment of duty and penalty over the said document. The said IA was disposed on 11.07.2025, the defendant has paid the duty and penalty over the gift deed 06.05.1989. Now the defendant filed the present applications to recall the DW1 for further examination in chief. The plaintiff has opposed the said applications. The defendant in the written statement has setup a specific defence with respect of suit schedule property. Therefore burden of proving the same is on the defendant. Under such circumstances, I am of the opinion that, opportunity is to be given to the defendant to prove her case. If the DW1 is not recalled for further examination in chief it amounts to not giving opportunity to the defendant to prove her case. On looking through the facts and circumstances of the case, I am of the opinion that, if the said applications are allowed

by imposing costs it would meet ends of justice. On the basis of above reasons and discussions, I answer **Point No.1** in the **AFFIRMATIVE**.

8. Point No.2 :- For the aforesaid reason and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.VII and VIII filed by the defendant under Section 151 of CPC., and U/o.18 Rule 17 of CPC are hereby allowed on cost of Rs.500/-.

DW1 is recalled for further examination in chief of DW1.

Call on 25.02.2026.

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., H.B.HALLI.