

KADG420002552015



IN THE COURT OF THE CIVIL JUDGE AT HARAPANAHALLI.

**Present : Shri.Manu Sharma S.P.,
B.A.LAW.LL.M.
Civil Judge and JMFC, Harapanahalli**

Dated this 1st day of December 2025

OS No.17/2015

PLAINTIFF/s

1. Smt.Hawabi W/o late Imam Sab, Age about 60 years, Agriculturist, R/o Singara Tota village, Kanvehalli post, Harapanahalli Taluku.
2. Imam Alisab S/o Karim Sab, Age about 65 years, Agriculturist, R/o 2nd ward, Banigere, Harapanahalli Taluku.

(Shri.O.M.R. Adv.,)

-Vs.-

DEFENDANT/s

1. Mustafa S/o Late Kareem Sab, Aged about 40 years.
Dead by legal representatives.
- 1(a). Hazrabi W/o Mustafa, Age about 55 years.
- 1(b). Hazrabi D/o Mustafa, Age about 30 years.
- 1(c). Sameer S/o Mustafa, Age about 28 years.
- 1(d). Ayesha D/o Mustafa, Age about 26 years.

1(e). Kaeem S/o Mustafa, Age about 24 years.

1(f). Abid S/o Mustafa, Age about 22 years.

1(g). Tasleem D/o Mustafa, Age about 20 years, all are R/o Phatangiri, Harapanahalli, Ballari District.

2. Hameed S/o late Kareem Sab, Age about 38 years, Occupation: Auto driver.

3. Altaf S/o late Kareem Sab, Age about 36 years, Occupation: Mason.

4. Muneer S/o late Kareem Sab, Age about 34 years, Occupation: Coolie.

5. Chand S/o late Kareem Sab, Age about 32 years, All are R/o Singara Tota village, Kannavehalli post, Harapanahalli Taluku, Davanagere District.

(D.1(1b, 1c, 1d and D2 to 5 By Sri. N.N. Adv)
(D.1(a), 1e and 1f are absent)

ORDER ON IA No.XVIII and IXX

General power of attorney Mohammed Kallikap S/o Imam Sab, Age about 51 years, Agriculturist, R/o Singara Tota village, Kanvehalli post, Harapanahalli Taluku.
/s/APPLICANT/s

-Vs.-

DEFENDANTS /s/OPPONENT/s 1. Mustafa S/o Late Kareem Sab, Aged about 40 years.
Dead by legal representatives.
1(a). Hazrabi W/o Mustafa, Age about 55 years.
1(b). Hazrabi D/o Mustafa, Age about 30 years.

1(c). Sameer S/o Mustafa, Age about 28 years.

1(d). Ayesha D/o Mustafa, Age about 26 years.

1(e). Kaeem S/o Mustafa, Age about 24 years.

1(f). Abid S/o Mustafa, Age about 22 years.

1(g). Tasleem D/o Mustafa, Age about 20 years, all are R/o Phatangiri, Harapanahalli, Ballari District.

2. Hameed S/o late Kareem Sab, Age about 38 years, Occupation: Auto driver.

3. Altaf S/o late Kareem Sab, Age about 36 years, Occupation: Mason.

4. Muneer S/o late Kareem Sab, Age about 34 years, Occupation: Coolie.

5. Chand S/o late Kareem Sab, Age about 32 years, All are R/o Singara Tota village, Kannavehalli post, Harapanahalli Taluku, Davanagere District.

ORDER ON IA No.XVIII and XIX

1. Plaintiffs have filed IA No. XVIII U/Sec. 151 of CPC to reopen the case for the purpose of cross examining DW-1 to 4.

2. Plaintiffs have also filed IA No. XIX U/Sec. 151 of CPC to recall DW-1 to 4.

Both applications are supported by affidavit of GPA of plaintiff.

It is stated in the affidavit due to ill-health he could not furnish necessary documents to his counsel at Davanagere and hence cross examination could not be conducted.

3. Defendants have filed common objection to IA No.18 and 19. It is stated in the objection that

4. on the earlier occasion plaintiffs had filed application to reopen the case when matter was reserved for arguments.

5. It is further stated that on the earlier occasion plaintiffs filed memo to reject the evidence of PW-1 and 2 when matter was reserved for arguments. Court as per its order dated 01.04.2025 had allowed the application filed by the plaintiff seeking permission to cross examine Dw-1 to 4 but inspite of the same as plaintiff did not cross examined DW-1 to 4 court was pleased to treat cross examination as nil as per order dt. 01.08.2025.

6. It is further stated that the sole intention of the plaintiffs is to prolong the matter. Based on said contentions defendants prayed for rejection of the application.

7. Heard arguments and perused records. On perusal of applications and counter the following points would arise for my consideration.

1. Point No.1 :- Whether plaintiffs have made out grounds to reopen the case and to recall Dw-1 to 4?

2. Point No.2 :- What Order?

8. My answers to the above points are as here under:

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

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

REASONS

9. Point No.1: Plaintiff has filed applications to reopen the case and to recall DW-1 to 4. Per contra defendant has contended that time and again applications are filled to prolong the matter. It is to be noted that this court in its order Dt. 01.04.2025 had observed that as per order dated 30.03.2023 court granted permission to the plaintiffs to appear through GPA holder and also extended opportunity to plaintiffs to cross examine to DW-1 to 4.

10. In the said order this court has also observed that plaintiffs have taken two adjournments when matter was reserved for cross examination of DW-1. However this court once again extended opportunity to plaintiffs cross examine DW-1 to 4 as per its order

dated 01.04.2025 but once again later on plaintiff took adjournment on 11.07.2025 and 18.07.2025. However finally once again this court passed order Dt. 01.08.2025 treating cross examination of Dw-1 to 4 as nil. In view of aforementioned facts the reason assigned by the plaintiff that he could not submit documents to counsel to enable him to conduct cross examination can not be accepted for the simple reason that this court has granted sufficient opportunity to the plaintiff to cross examine DW-1 to 4 by allowing the applications filed by plaintiff on 01.04.2025 and on 30.03.2023. It is clear from the ordersheet that two times plaintiff has filed application to reopen the case and to recall DW-1 to 4 for cross examination. It is also clear from the ordersheet that on the aforesaid both occasions plaintiff did not come forward to cross examine Dw-1 to 4. This shows that plaintiff has adopted the delay tactics which needs to be curbed by imposing heavy cost. It is equally important to note that matter has to be disposed off on merits. Therefore it is necessary to reopen the case and to recall witnesses for cross examination. However delay can not be viewed lightly. But to meet ends of justice delay which has been caused in the present case needs to be compensated by imposing heavy cost. Hence I answer **Point No.1 in the Affirmative.**

11. Point No.2:- For the reasons stated above I am of the opinion that applications are to be allowed by imposing heavy cost.

In the result the following:-

ORDER

Applications filed by plaintiffs are hereby allowed on total cost of Rs. 4,000/- payable to defendants by the plaintiff.

Plaintiffs are permitted to cross examine

Dw-1 to 4 subject to payment of cost.

(Dictated to the typist directly on the computer, typed by him, the transcript revised and corrected by me, and then pronounced in the open court on this **1st Day of December 2025.**)

**(Manu Sharma S.P.)
Civil Judge and JMFC.,
Harapanahalli.**