

ORDER BELOW EXH NO. 108

By this application, defendants No. 2 to 13 pray to set aside “No Cross” order passed against them.

2] It is contended that their Advocate could not remain present and conduct cross examination of plaintiff's witness. Therefore, “No cross” order is passed against them. The matter relates to immovable property. It is necessary to permit those defendants to cross examine plaintiff's witness. They, therefore, pray to allow this application.

3] Learned Advocate for plaintiffs resisted this application by filing say. According to him, present application is filed only to prolong the matter and harass plaintiffs. Sufficient opportunity is already given to those defendants. However, they did not avail the same and hence, this application is liable to be rejected.

4] Heard both sides. Perused record.

5] This is a suit for partition and separate possession. Plaintiff No. 6 filed his evidence affidavit (Exh. 78) on 10-8-2016 and since then, the matter was pending for his cross examination. On 26/9/2016 vide order below application (Exh. 102), time was given to those defendants to cross examine plaintiff No. 6. On 19-10-2016, vide order below application (Exh. 103), last chance was given to them. On 16/11/2016, vide order below application (Exh. 104), one more opportunity was given. On 23-11-2016, application (Exh.105) filed by those defendants

seeking time stood rejected and “No cross” order came to be passed. By instant application, defendants No. 2 to 13 pray to set aside this order.

6] Learned Advocate for plaintiffs points out that the reason for not cross examining plaintiff, is not at all genuine and sufficient. There is much substance in this submission. It is also seen that inspite of giving sufficient opportunity, those defendants prolonged the matter for more than 6 months and that too, without any just reason. However, it is to be noted that the suit is for partition and separate possession. Valuable rights of parties are involved in the matter. It is in the interest of justice to give one more opportunity to those defendants to contest the suit. However, the delay caused by them can not be ignored. If defendants No. 2 to 13 intend to contest the suit, they will have to compensate plaintiffs by paying costs. In such situation, I am inclined to allow defendants No. 2 to 13 to participate in the proceeding subject to their paying costs to plaintiffs. Considering the facts that the matter is of the year 2011 and it is unnecessarily prolonged, imposing costs of Rs.200/- on each of the defendants would meet the ends of justice. Hence, the order :

- O R D E R -

- I) Application (Exh.108) is allowed.
- II) Defendants No. 2 to 13 are allowed to cross-examine plaintiff No. 6 subject to their each paying costs of Rs.200/- to plaintiffs, on or before next date of hearing.

III] Defendants No. 2 to 13 shall proceed with the matter on the next date without fail. It is made clear that their failure to pay costs and proceed with the matter on the next date would automatically vacate this order.

Shirur Kasar
Date :-22/3/2017

Sd/-
(Anil B. Kulkarni)
Civil Judge (J.D.) Shirur Kasar.