

Order below Exh. 141 in RCS 19/2019
Laxman & Ors Vs Rayappa & Anr 1

- The application is to recall the witness on behalf of the plaintiffs.
- 2 Perused the application, say, and the record.
- 3 Heard.
- 4 The suit is for a declaratory decree of the owner and a decree of perpetual injunction. The defendants have contested the claim. This Court has framed issues below Exh.113.
- 5 The application is premised on the ground that on 23/04/2026 plaintiff 2 was present however he could not attend when the matter was called out. Therefore, it would be prayed that the application may be allowed.
- 6 The application is opposed on the ground that the application is misconceived. No witness list has been filed. The plaintiff is delaying the matter. The witness was absent resulting into the order. Hence, the application is opposed.
- 7 As a matter of fact and record, the plaintiff led evidence of the POA below Exh.118 on 24/09/2025. The same came to be not pressed on 02/02/2026 after part of cross examination. The suit was dismissed in default for want of prosecution on 07/01/2026. On the same day plaintiff moved application below Exh.122 seeking restoration of the suit. The same is allowed in the interest of justice. The plaintiff filed affidavit in lieu of examination in chief Shrimant Birajdar below Exh.132. The witness was cross examined. The plaintiff led evidence of Chenappa below Exh.137. The witness was cross examined. The evidence of Jaywant came to be discarded.
- 8 It is settled law that recall of the witness has to be allowed for sufficient cause. The right cannot be foreclosed. The application is supported by affidavit. Admittedly, the plaintiffs have delayed the trial. However, considering the nature of the suit, a final opportunity needs to be granted. The Ld advocate for the defendant is right in arguing that the provisions of Order 18 Rule 17 of the CPC cannot be invoked, the fact remains this Court can exercise inherent powers under Section 151 of the CPC to meet the ends of justice. The inconvenience caused may be remedied. Costs follows the event. Hence, the following

Order

The application is allowed subject to costs of Rs.1000/- payable to the otherside forthwith.

- 2 The payment of costs is a condition precedent.
- 3 On due compliance the plaintiffs are permitted to lead evidence.
- 4 The plaintiffs to be meticulous in prosecuting the suit.

Jath

Date:- 08/07/2026

(Sanjay P. Bunde)

Jt C.J.J.D. Jath