

KABC0A0011852023



**IN THE COURT OF THE 74th ADDL. CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU.**
(CCH-75)

Dated: This the 28th day of June, 2025.

PRESENT:

Sri.PRAKASH CHANNAPPA KURABETT, B.Sc., LL.B.,(Spl.),
74th Addl. City Civil and Sessions Judge, Bengaluru.

O.S. No.25489/2023

Plaintiff:	Sri.Dinesh.R.
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(Rep.by Sri.PS, Advocate)

V/S

Defendant:	Sri.D.K.Prabhakar.
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(Rep.by Sri.EV, Advocate)

PARTIES IN IA No.VI:

Applicant:	Sri.Dinesh.R. - Plaintiff.
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V/S

Opponent:	Sri.D.K.Prabhakar - Defendant.
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ORDERS ON IA No.VI

This is an application filed by plaintiff under Section 151 of CPC seeking to recall P.W.1 for further evidence.

2. *In the affidavit annexed to the application, applicant has sworn to the facts that he has filed this suit against the defendant for the relief of injunction and other reliefs. He has adduced his evidence and marked few exhibits. Now the case is posted for cross of P.W.1. At the time of preparing for cross of P.W.1, his counsel found that by oversight some documents are not marked as exhibits, which is already on the file of this court. Hence, it is just and necessary to adduce further evidence of P.W.1 (marking of documents). The further evidence of P.W.1 is just and necessary in order to establish case. The non-producing the above said documents on last date of hearing is not intentional one but due to above said bonafide reasons, if the IA is not allowed, he will be put to much hardship and*

inconvenience. Accordingly has prayed for allowing the application.

3. Defendant has objected for the application stating that the IA is not maintainable either in law or on facts. The plaintiff filed application to mark the documents in this case. But, the plaintiff has not stated in the application that what are the documents they are going to be marked and how they are relevant to the case. The plaintiff has stated the proper ground that why he has not marked those documents at the earlier stage though they are produced in the case. The IA is baseless and without proper ground. He has prayed for dismissal of the application.

4. Heard and perused the materials on record.

5. The points that would arise for my consideration are:

- 1. Whether the plaintiff is entitle for the relief claimed in the application?**

2. What order?

6. My answer on the aforesaid points are as under:-

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

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

REASONS

7. POINT No.1: This is a suit filed by the plaintiff against the defendant for the relief of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the schedule property.

8. The records would show that after completion of pleadings, issues were formulated. The plaintiff examined as PW.1 and produced documents. PW.1 was subjected for cross-examination. When the case was posted for cross-examination of P.W.1, he filed the instant application.

9. *The Ld. Counsel for the plaintiff fairly submitted that at the time of preparing for cross of P.W.1, his counsel found that by oversight some documents are not marked as exhibits, which is already on the file of this court. Hence, it is just and necessary to adduce further evidence of P.W.1 (marking of documents). The further evidence of P.W.1 is just and necessary in order to establish case. The non-producing the above said documents on last date of hearing is not intentional one but due to above said bonafide reasons. If an opportunity is not granted to adduce further evidence of P.W.1 he will not be able to convince the court as to the role of the defendant. There are no laches on his part and his non-appearance before the court is not intentional. He has a good case on merits and he is not given an opportunity by the court he will be put to irreparable loss and the balance of convenience is lies in his favour. His absence is due to bonafide reasons and not an intentional one.*

10. *On the other hand the defendant contend that the plaintiff has not stated in the application that what are the*

documents they are going to be marked and how they are relevant to the case. The plaintiff has stated the proper ground that why he has not marked those documents at the earlier stage though they are produced in the case. The IA is baseless and without proper ground. The plaintiff not utilized the opportunity granted by the court.

11. In the application plaintiff has not stated on what aspect he want to reopen the case. Having regard to the submission made by the Ld. Counsel for the plaintiff, the dispute in controversy and sufficient time took by plaintiff to adduce his further evidence and also to lead evidence, the court is of the opinion that justice would be met if the instant application is allowed and permit plaintiff to reopen the case to clarify certain important aspects which were not covered while subjecting PW.1 for further evidence.

12. Let the facts as it may be. Only on the ground of delay if the application is rejected, definitely the plaintiff will be put to much hardship and inconvenience rather than the

defendant. If, the case is recalled no prejudice will be caused to the defendant. In order to adjudicate the matter, it is necessary that plaintiff shall be provided an opportunity to recall the case and contest the case. Accordingly, I hold point for consideration No.1 **in Affirmative** and proceed to pass the following:-

ORDER

**IA No.VI filed by the plaintiff
u/S XVIII Rule 17 r/w Sec.151 of
CPC is allowed.**

**P.W.1 is recalled. Case is re-
opened for further evidence of
P.W.1.**

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the 28th day of June, 2025).

(PRAKASH CHANNAPPA KURABETT)
LXXIV Addl. City Civil & Sessions Judge,
Mayohall Unit, City Civil Court,
Bengaluru. (CCH – 75)

