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A.Nos.1532 & 1533 of 2023 in
C.S.No.567 of 2017

R.N.MANJULA,J.

The applicant is the 9th defendant in the suit. These applications have been filed to reopen the evidence of P.W.1 by recalling him for cross-examination on behalf of the applicant / 9th defendant.

2. The first respondent / plaintiff has filed the counter by stating that P.W.1's cross-examination started as early as on 26.11.2019 and from then onwards, his cross-examination is not completed. The defendants have chosen to file applications one after another to set aside *exparte* orders against them and made P.W.1 toiling in the box for years together.

3. The suit has been filed by the first respondent/ plaintiff for partition. There are totally 9 defendants and after the pleading were filed, the trial commenced and P.W.1 has filed his chief affidavit on 26.11.2019 and thereafter, he is available for cross examination. Despite P.W.1 was present for every hearing, subsequently the defendants did not choose to



cross examine him and found pleasure in getting repeated adjournments and thereafter, the defendants one after another filed applications to set aside *exparte* orders and to get opportunity to cross examine P.W.1.

4. In the same style, the 9th defendant has come out with these applications to reopen and recall P.W.1. It is unfair on the part of the defendants to retain the witness in the box for years together without completing his cross examination. Such a lethargic attitude on the part of the defendants would grossly affect the interest of justice and frustrate the plaintiff who had filed a suit for seeking certain reliefs. The tactics adopted by the defendants cannot be encouraged. It is seen that each time when the application is filed by one after other defendant, the same has been allowed on payment of costs. The imposition of cost alone cannot compensate the long waiting caused to P.W.1. However, if the 9th defendant is allowed to cross examine P.W.1, atleast thereafter his evidence would get completed. So, in the interest of justice, I feel one opportunity can be given to the 9th defendant by fixing the date for cross-examination and also on payment of heavy cost.



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5. In view of the above stated reasons, the applications in A.Nos.1532 & 1533 of 2023 are allowed on payment of cost of Rs.10,000/- to the first respondent / plaintiff payable by today itself (27.04.2023). List the matter on 28.04.2023 for reporting compliance.

27.04.2023

gsk

NOTE : Issue order copy today (27.04.2023).



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