

ORDER ON I.A.NO.III

The plaintiff has filed two separate I.A's. i.e.,(i) I.A. No.II Under Order XVIII Rule 17 r/w.Sec.151 of C.P.C. to recall the P.W.1. (ii) I.A.No.III Under Order VII Rule 14 r/w.Sec.151 of C.P.C to receive the documents.

2. The defendants have filed common objection to the said I.A.No.II and III.

3. Heard the learned counsel for the plaintiff and defendants. Perused the pleadings order sheet and materials placed on record.

4. The points that arises for my consideration is

(1) Whether it is just and recall the P.W.1 for the test of further chief-examination and to permit to produce the list of document as prayed in I.A.No.II and III?

(2) What order?

5. My findings to the above points are as under:

Point No.1: Affirmative.

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

REASONS

6. The plaintiff has filed two separate I.A's. i.e.,(i) I.A. No.II Under Order XVIII Rule 17 r/w.Sec.151 of C.P.C. to recall the P.W.1. for further chief examination and (ii) I.A.No.III Under Order VII Rule 14 r/w.Sec.151 of C.P.C to receive the documents. These two I.A's requires common discussions and observations therefore these points are taken together for the same purpose to avoid repetition.

The plaintiff has contended that he is acquainted the facts of the case. He has filed the

present suit for partition and separate position of his legitment share in the social property. He further contended that the present case is posted for cross examination of P.W.1 and some material documents which are necessary to decide the matter on merit were not marked at the time of chief examination since he could not found the same at the time of his chief examination. He further contended that those documents were traced out while white washing his home. Therefore he prayed this court to re-open the case and permit him to lead further evidence on the above said material documents to prove his case. He further contended that if the I.A.No II and III are not allowed then he will be put into irreperable loss and hardship accordingly he prayed for allowing the I.A.No.II and III in the interest of justice.

7. On the order hand, the defendants contended that contents of affidavits are all false, frivolous and vexatious which is not maintainable either on law or on the facts of the case. He further contended that the application filed by the plaintiff is hit by Rule 18(3) and Rule 23 of Civil Rules of Practice since the plaintiff sought two prayers in one I.A and the name of the defendant No.1 was

wrongly mentioned in the said I.A's . The plaintiff has produced those concocted documents in order to engulf the suit schedule property. The death certificate of defendant No.1 produced by the plaintiff is a concocted document and hence they prayed for rejection of I.A.No. II and III.

8. Taking into consideration of the nature of the reliefs sought for in the suit and having regard to the reasons assigned on behalf of the plaintiff and marking of said documents inorder to prove his case it is just and necessary. The delay caused in filing such documents can be met with imposing cost. Hence, I am of the opinion that it is just and necessary to recall the P.W.1 for the purpose of further chief-examination, if the plaintiff is permitted for further chief-examination of the P.W.1 no hardship or injury would be caused to the defendants for the reasons that they are at liberty to cross-examine the P.W.1 and are at liberty to object the same during the marking of the said documents. On the other hand, the plaintiff will be put to great loss and hardship in the event of dismissal of this applications for the reasons that they will be prevented from further cross-examining the P.W.1 and it will lead for multiplicity of proceedings and it is just and necessary to decide

the case on merits upon the facts and circumstances of the case. Hence I answer the point No.1 in the Affirmative.

9. **Point No.2:** In view of the foregoing reasons, observations and discussions, I proceed to pass the following:-

ORDER

I.A.No.III filed by the plaintiff Under Order VII Rule 14 r/w.Sec.151 of CPC is hereby allowed on cost of Rs.100/-. The documents produced along with I.A.No.III by the plaintiff is received subject to proof.

I.A.No.II filed by the plaintiff Under Order.XVIII Rule 17 r/w.Sec.151 of CPC is hereby allowed. P.W.1 is hereby recalled.

Call on for further chief of P.W.1
by

**Civil Judge and J.M.F.C,
Byadgi.**