

ORDERS ON I.A. NO.18

This application is filed by the plaintiff U/O 16 Rule 6 of CPC with a prayer to call for the records in O.S.No.348/94 from the central record room enabling the plaintiff to get expert opinion regarding the signature of plaintiff No.1 in the interest of justice and equity.

2. It is stated in the annexed affidavit that, suit properties are ancestral and joint properties of plaintiffs and defendant No.1 to 3. Plaintiff No.1 has not instituted the suit in O.S.348/1994 nor entered into compromise as alleged by the defendant No.4 & 5. The plaintiff No.1 is Ningamma not the Lingamma. It is necessary to obtain expert opinion regarding the signature of plaintiff No.1 in the case papers of O.S.348/94. Hence, this application.

3. The defendant No.4 & 5 have filed objections stating that, in the year 2012 itself, in the written statement the defendants have pleaded about O.S.348/94. As per compromise, khata has been mutated in the year 1994-95. The application is highly belated. It is filed with an intention to delay the trial. Accordingly, prayed to reject the application.

4. Perused the application and the objections. Heard the argument .

5. The points that arise for my consideration are;

1. Whether the plaintiff No.1 made out sufficient grounds to allow the application?

2. What Order?

6. My answer to the above points are as follows;

Point No.1 : In the Negative;

Point No.2 : As per Final Order
for the following;

REASONS

7. **POINT NO.1:** Plaintiffs filed the suit for the relief of partition and separate possession. The defendant No.4 & 5 have filed the written statement on 28.06.2012. Plaintiffs have not disputed the correctness or genuineness of the proceedings in O.S.348/94 in the plaint. It is not the case of the plaintiff that, she has not instituted the suit in O.S.348/94 nor entered into any compromise. There is no allegation in the plaint as to the decree in O.S.348/94 was obtained by playing fraud on the court. Under such circumstance, it is uncalled to get any expert opinion as prayed in the application.

8. The suit in O.S.348/94 ended in the compromise. Order 32 Rule 3-A of CPC bars to institute a suit with a prayer to set aside a decree on the ground that the compromise was not lawful. A party to a compromise has no option but to approach the court where the compromise was entered. The

correctness of the decree in O.S.348/94 cannot be looked into in any subsequent proceedings.

9. Plaintiff filed the present application after lapse of almost 7 years, after filing the written statement. The trial is at concluding stage. No application is filed to get expert opinion. It appears that application is filed solely with an intention to delay the trial. It is significant to note that, plaintiff No.1 has not entered the witness box to dispute the correctness of proceedings in O.S.348/94.

10. For the reasons stated above, I come to conclusion that the application is filed with an intention to delay the trial and it is devoid of merits. Accordingly I answer the above point in the **Negative**.

11. **POINT NO.2:** For the above discussed reasons, I proceed to pass the following;

ORDER

I.A. NO.18 U/o 16 Rule 6 of CPC filed by the plaintiff is rejected.

**Senior Civil Judge & JMFC.,
Sira.**