

KABC010211522017



**IN THE COURT OF I ADDL. CITY CIVIL & SESSIONS JUDGE AT
BENGALURU (CCH.No.2)**

Present: - **Sri. B.P.Devamane, LL.M.**
I Addl. City Civil & Session Judge,
Bengaluru.

Dated this the 22nd day of November 2024.

O.S.No.5921 / 2017

Plaintiff: **Smt.Caroline Nivedita,**
W/o. Benedict Praveen Kumar Caleb,
Aged about 42 years,
R/at New No.24, Old No.19, 1st Cross,
2nd Main, S.G.Palya, Bengaluru-560019.

(By Sri.R.A.Dev Anand, Adv.)

- VS -

Defendants: **1. Sri.Benedict Praveen Kumar Caleb,**
S/o. Late Paul William Jayakumar Caleb,
Aged about 47 years.

2. Smt.Kanaka Williams,
W/o. Late Paul William Jayakumar Caleb,
Aged about 79 years.

Both are r/at No.72, Abharna,
Bhuvaneshwarinagar, C.V.Raman
Nagara, Bengaluru-560 093

(By Smt.S.D.Vijayalakshmi, Adv.)

ORDER ON IA No.7

Advocate for the plaintiff filed I.A.No.7 under Order 6 Rule 17 of CPC, with prayer for permission to amend the plaint by inserting para 9(a) & 9(b) in the plaint.

2. In the affidavit supporting IA No.7, it is contended that, initially, plaintiff has filed this case as P & SC No.277/2015 in respect of the Will dated 12.08.2003 executed by her father-in-law in her name. In view of the citation issued in P & SC, these defendant Nos.1 and 2 appeared and contested the case. Accordingly, P & SC No.277/2015 is converted into this suit and numbered as O.S.No.5921/2017. The defendants denied the execution of the Will. Under these circumstances, it is necessary to insert the proposed amendment to the plaint. The defendant No.1 is the husband of this plaintiff. Original Will is in the custody of the defendant No.1, which is narrated in the proposed amendment para Nos.9(a) & 9(b) and regarding possession of the suit schedule property. If the IA is not allowed, the plaintiff will be put to hardship. On the contrary, if the IA is allowed, no loss or hardship will be caused to the defendants. Hence, prayed to allow I.A.No.7.

3. Defendants have filed their objections and contended that, the Will in question is false and fabricated document got up by the plaintiff with malafide intention to knock off the valuable schedule property to the detriment of the defendants and other joint family members of the deceased. The plaintiff has left the matrimonial house unceremoniously with utter disregard to the marital bond and obligations by deserting the 1st defendant / husband, hence, she has no right to claim any interest over the

joint family properties. The plaintiff has made the 2nd defendant to come to the Court in her old age. The proposed amendment is not necessary for adjudication of this case. The amendment sought is belated. The plaintiff has not made out grounds to allow IA No.7 and prayed to reject the IA.

4. Heard the arguments. Perused the materials on record.

5. Now the points that arise for my consideration are as follows :-

1. Whether I.A.No.7 filed by the plaintiff under Order 6 Rule 17 of CPC, deserves to be allowed ?
2. What order ?

6. My answer to the above 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:-** It is not in dispute that, basically, P & SC No.227/2015 was filed by this petitioner / plaintiff. After issuance of notice of the petition in paper publication, these respondents / defendants appeared and contested the case. Accordingly, P & SC No.227/2015 is converted and registered as original suit. The plaintiff claiming the suit schedule property under the registered Will dated 12.08.2003 allegedly executed by her father-in-law.

8. It is case of the plaintiff that, the case is rest on the Will, hence, the proposed amendment i.e., in para 9(a) regarding custody of the Will is explained and Para 9(b) regarding possession of the property is explained. Defendants have simply stated that, plaintiff has filed this suit by deserting her matrimonial home and made the defendants to appear before the Court. Defendants have not stated as to how the amendment sought is not permissible etc. In para-9(a) of the proposed amendment, it is contended that, husband of the plaintiff forcibly opened the locker and took the original Will. This pleading is necessary since the case is rest on the Will. Further, Para-9(b) is regarding possession of the property, which is also necessary for proper adjudication of the matter. If the IA is allowed, defendants will have every right of filing additional written statement and contest the case. Looking to the facts and circumstances of the case, in the considered opinion of this Court, the proposed amendment is necessary for proper adjudication of this suit. According, **I answer point No.1 is in the Affirmative.**

9. **POINT No.2** :- In view of the above, I proceed to pass the following :-

ORDER

I.A.No.7 filed by the plaintiff under Order 6 Rule 17 of CPC, is allowed.

The plaintiff is permitted to amend the plaint and to furnish the amended plaint.

(Dictated to the Stenographer-III, transcribed and typed by her, corrected and then pronounced by me in the open Court on this the **22nd day of November, 2024**)

(B.P.Devamane)
I Addl. City Civil & Sessions Judge,
Bengaluru.