

13/12/2018

For orders,

ORDERS ON IA NO.II UNDER ORDER XIV
RULE 1 R/W SEC.151 OF CPC

The plaintiff counsel filed the above application praying to amend the issues to determine the real controversy between the parties. The amendment sought for is :

Issue No.1 : Whether the plaintiffs to prove the defendant Nos.1 to 3 in collusion with each other and by misrepresentation, manipulation with ulterior purpose executing a sale deed by the defendant No.1 in favour of defendant Nos.2 and 3 dated 09/11/2009 in order to exploit the adjoining properties lawfully belonging to the plaintiffs ?

Issue No.2: Whether the plaintiffs prove that the eastern and southern side boundaries mentioned in the sale deed dated 09/11/2009 as extracted in the schedule to the plaint are false and incorrect and not binding on the plaintiffs ?

2. In the annexed affidavit, it is stated that plaintiff has filed the suit for declaration to the effect that the boundaries on the eastern and southern side as mentioned in the sale deed

dated 09/11/2009 has been executed by the 1st defendant in favour of defendant Nos.2 and 3 are false and not binding on the plaintiffs and consequential relief of mandatory injunction directing the defendants to make rectification in the schedule to the sale deed dated 09/11/2009 showing the correct boundaries on the eastern and southern side as the property belonging to the plaintiffs by rectifying/removing the false boundaries setting out as the property of defendant Nos.2 and 3. It is the specific case of the plaintiffs that defendant Nos.1 to 3 have malafide motive and high handed intentions with active collusion created a fictitious document styled as sale deed dated 09/11/2009 although no sale consideration is mentioned and more so by setting out false boundaries on the eastern and southern side as if the properties of the defendant Nos.2 and 3, this designed mischief is made only for the purpose of exploiting the adjacent properties which are absolutely belonging to the plaintiffs who are tracing right, title and interest through their father Sri.Hemanna, who had purchased the adjacent properties on the eastern and southern side to

the property of the 1st defendant measuring 20x65 feet under the registered sale deeds dated 29/04/1965 and 28/02/1969 respectively. The plaintiffs have specifically pleaded the said facts in the averments at para No.9 of the plaint and reading to the effect at 17th line of the para 13 of the plaint that “showing the property of he defendant Nos.2 and 3 in the alleged sale deed dated 09/11/2009 executed by the defendant No.1 in favour of the defendant Nos.2 and 3 is prima facie misrepresentation and manipulation for the ulterior purpose of enabling the defendant Nos.2 and 3 to exploit the adjoining properties lawfully belonging to the plaintiffs. Hence, prayed that allow the application.

3. The defendant counsel filed objections to the above application stating that the application is not maintainable in the eye of law. This Court has framed the issues based on the pleadings and issues framed by this Court is rightly correct. There is no necessary to recast the issues sought by the plaintiff in the present application. The plaintiff has filed the above application for dragging the proceedings and

protracting the same and also malafide intention to harass the defendant. In both the issues the burden is cast on the plaintiffs. Even the recast issues will not change the burden on the plaintiffs. Issue No.1 was framed by this Court on the basis of the averments made in para 14 of the plaint averments in which it is clearly alleged that cause of action for the suit arose on 09/11/2009 when the first defendant executed the sale deed by illegally describing the boundaries on the eastern side and southern side as the properties of these defendants. There is no averment, as to misrepresentation manipulation with ulterior purpose etc., in this para which was basis for the issue. With regard to issue No.2, this Court has correctly framed the issue on the basis of the pleading. Whether the issue is restricted to east and north side boundaries as is now sought for, or all the boundaries are true and correct as framed by this Court makes no difference, since boundaries on the eastern side and southern side are included in the issue. Hence, prayed that dismiss the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application I.A. under Order XIV Rule 5 of Code of Civil Procedure filed by the plaintiff deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The plaintiff has filed the suit for declaration and mandatory injunction in respect of the suit schedule property. The plaintiff has sought to rectify the issues framed by this Court. At para 9 of the plaint averments, the plaintiffs have taken contention that all the defendants in collusion coupled with malafide motive and fraudulent intention have created the deed styled as sale deed executed by defendant No.1 in favour of defendant Nos.2 and 3. ?But the Court framed the issue No.1 that defendant Nos.2 and 3 executed the sale deed in favour of

defendant no.1. But actually as per plaint averments, execution made by defendant No.1 in favour of defendant Nos.2 and 3. Further, the plaintiff has sought the relief to declare that boundaries shown on eastern and southern side as property of defendant Nos.2 and 3 in the schedule to sale deed dated 09/11/2009 executed by defendant No.1 in favour of defendant Nos.2 and 3 is false and not binding on the plaintiff. Hence, in my view, alternative/rectifying the issues are necessary with respect to issue Nos.1 and 2. Further, the said alternative issues are necessary for determining the matter in controversy between the parties shall be so made. Hence, issue Nos.1 and 2 are deleted and recast and additional issue is framed. Accordingly, I answer issue No.1 partly in Affirmative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.II under Order XIV Rule 5 of Code of Civil Procedure filed by the plaintiff is herewith allowed.

The issue Nos.1 and 2 are recast as under:

1. Whether the plaintiffs prove that defendant Nos.1 to 3 in collusion with each other by misrepresentation, manipulation with ulterior purpose executing a sale deed dated 09/11/2009 by the defendant No.1 in favour of defendant Nos.2 and 3 in order to exploit the adjoining properties lawfully belonging to them ?

2. Whether the plaintiffs prove that the boundaries shown on eastern and southern side as the property of defendant Nos.2 and 3 in the sale deed to schedule dated 09/11/2009 executed by defendant No.1 in favour of defendant Nos.2 and 3 is false and not binding on the plaintiffs ?

Addl. Issue framed as under :

1. Whether the plaintiffs prove that they are entitled for mandatory injunction as sought for ?

Call on 16/01/2019.

(Dictated to the Judgment Writer, transcribed by her, transcribed by her, corrected and then pronounced by me in open court this the 13th day of December, 2018.)

(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE

Issue Nos.1 and 2 are recast as under :

1. Whether the plaintiffs prove that defendant Nos.1 to 3 in collusion with each other by misrepresentation, manipulation with ulterior purpose executing a sale deed dated 09/11/2009 by the defendant No.1 in favour of defendant Nos.2 and 3 in order to exploit the adjoining properties lawfully belonging to them ?

2. Whether the plaintiffs prove that the boundaries shown on eastern and southern side as the property of defendant Nos.2 and 3 in the sale deed to schedule dated 09/11/2009 executed by defendant No.1 in favour of defendant Nos.2 and 3 is false and not binding on the plaintiffs ?

Addl. Issue :

1. Whether the plaintiffs prove that they are entitled for mandatory injunction as sought for ?

Bangalore
Dt: 13/12/2018

(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE.