

KABG040023582013



COMMON ORDER ON IA No.14 & 15

The plaintiff has filed the I.A.No.14 &15 U/o VI Rule 17 R/w Section 151 of C.P.C and U/o I Rule 10 (2) and there by prayed for the permission to amend the plaint and for the permission to implead plaintiff No. 4 to 11 in the suit as plaintiffs respectively.

2. In the affidavit filed along with the present application the plaintiff No.2 has sworn to the facts that the plaintiffs have filed the suit against the defendant for the relief of declaration and consequential relief of permanent injunction. Further the husband of the plaintiff No.2 is died on 27/7/2008 but at the time filing the suit inadvertently her daughters, sons and grandchildren are not arrayed as plaintiff. Hence the plaintiffs have filed separate application to implead them as party to the suit as plaintiff No.4 to 11. Accordingly on addition of them it has become necessary to describe them in the genealogy in the plaint. Hence the plaintiffs have filed this application. The amendment sought will not change the nature of the suit and it is a formal

application. Further if this application is allowed no prejudice will cause on the other hand the plaintiff will suffer irreparable loss. On this ground prayed to allow this application.

3. Per contra the defendants have filed their objection to I.A No.14 and denied the entire contention of the plaintiff and specifically contended that the plaintiffs have taken much time to proceed the case. Evidence of the plaintiff is partly recorded but they have not disclosed either in the plaint or in the evidence in respect of the proposed plaintiffs. Hence at this stage the application deserves to be dismissed. The plaintiffs are aware of their family members but intentionally they have not brought on record. If this application is allowed it amounts to reopening of the suit or it amounts to new suit. Hence prayed to dismiss this application. However the defendants have not filed objection to IA No.15

4. Heard the learned counsel for the plaintiff and the defendant. Perused the material placed on record.

5. The plaintiffs have filed these application to implead proposed plaintiff No. 4 to 11 in the suit and accordingly for the amendment of the plaint. The plaintiffs have filed the present suit for the relief of declaration and consequential relief of injunction. The husband of the plaintiff no.2 died prior to the institution

of the suit leaving behind the plaintiffs as well as proposed plaintiff No.4 to 11. But the plaintiffs have not made them as party to the suit. On the other hand the defendants have contended that the plaintiffs neither in their plaint nor in their evidence have disclosed about proposed plaintiffs. Under such circumstances the application is not maintainable. No doubt the plaintiffs have not made any justifiable reasons for the delay. But as the suit is for the relief of declaration and permanent injunction and the proposed plaintiff No.4 to 11 being the legal heirs of deceased Fakirappa have every right to contest the suit as a parties and they are the necessary parties to the suit too. Further the delay can be condoned by imposing necessary cost. Moreover the amendment sought will not change the nature of the suit. The counsel for the plaintiff has relied on the following decision

6. By considering the above discussion and law laid down by the Hon'ble Apex Court in the above case laws the application deserves to be allowed. Hence this court proceed to pass the following:

ORDER

The I.A.No.14 and 15 filed by
the plaintiffs are hereby allowed on
cost of Rs 500/- each.

O.S.No.1061/2013

For amendment and amended
plaint. Call on:

*III Addl. Civil Judge & JMFC,
Belagavi.*