

Order Sheet
In the Court Of: PRL. CIVIL JUDGE AND JMFC BELAGAVI
AT BELGAUM
F.R.No:O.S./1845/2012
Case Reg.No: O.S./1844/2012

Plaintiff

V E R S U S

Defendent

1)Shri. Jotiba So. Bhima Santaji

**1)Shri. Balkrishna Dudappa Muchandi
&2 others**

2)Shri. Piraji Dudappa Muchandi

Orders on I.A.No.9

Plaintiff has filed this suit seeking the relief of declaration that the plaintiff is the owner of the suit properties and for consequential relief of permanent injunction against the defendants. When the matter was set down for cross examination of PW.1 plaintiff has filed I.A.No.9 U/O 6 Rule 17 praying that he may be permitted to amend his plaint by inserting the following:

“On page No.4, in paragraph No.7, at line No.3 after the words “illiteracy of the plaintiff”, the following lines may kindly be inserted.

“the deceased Balappa i.e. grand father of the defendant has created false, bogus and sham document i.e. alleged sale deed behind the back of the plaintiff on 22-9-1955 and”

On page No.5, after prayer paragraph No.12A, the following prayer may kindly be inserted.

“AA. A decree of declaration that, the alleged sale deed dated 22-9-1955 is not binding upon the plaintiff.”

In the affidavit accompanied to the I.A.No.9 it is contended that the alleged sale deed dated 22-2-1955 is a bogus document and by virtue of the said sale deed defendants claim possession over the suit schedule property.

Defendants have filed their statement of objection contending that the sale deed has confirmed the title and possession in favour of the grand father of the defendants and the plaintiff has no right to challenge the sale deed at this stage and it is further contended that the application is barred by time and if the proposed amendment is allowed then it would change the nature of the suit. On these contentions he has prayed for dismissal of I.A.No.1.

Heard the learned counsel for the respective parties and perused the materials placed on record.

Following points arise for my consideration.

1. Whether I.A.No.3 filed U/O 6 Rule 17 R/w Section 151 of CPC by defendant No.1 deserves to be allowed?

2. What order?

My findings for the above points are as under:

Point No.1 : In the affirmative

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

REASONS

Point No.1:- Admittedly by both the parties suit is one for the relief of declaration and permanent injunction. By the proposed amendment the plaintiff wants to insert the following:

“On page No.4, in paragraph No.7, at line No.3 after the words “illiteracy of the plaintiff”, the following lines may kindly be inserted.

“the deceased Balappa i.e. grand father of the defendant has created false, bogus and sham document i.e. alleged sale deed behind the back of the plaintiff on 22-9-1955 and”

On page No.5, after prayer paragraph No.12A, the following prayer may kindly be inserted.

“AA. A decree of declaration that, the alleged sale deed dated 22-9-1955 is not binding upon the plaintiff.”

Shri.A.L.Sandrimani learned advocate appearing on behalf of the plaintiff submitted that the sale deed is a sham document and was obtained behind the back of the plaintiff in the year 1955 and now the plaintiff is aged 93 years and he is the illiterate person and he has also lost his memory due to which he was unable to

insert the said paragraph at the time of filing of the suit. With these submissions he prayed to allow the application.

Shri.K.B.Hannurkar learned advocate for defendants submitted that the application at I.A.No.9 is barred by limitation and the contention of the plaintiff that he is 93 years old and his memory was lost etc., is denied by the defendants. With these submissions he prayed to dismiss the application.

Having heard learned counsel for both the sides, what transpires is amendment of pleadings as mandates U/O 6 Rule 17 needs to be carried out before commencement of trial. This does not mean that no amendment should be carried after once the trial is commenced. But the only thing which the party would proposes for amendment should convince before the Court that inspite of due diligence the party was unable to plead in his plaint at the time of filing of the suit. In the present case on hand it is clear that plaintiff is aged 93 years and at the time of execution of the sale deed he was unaware that the sale deed was being executed behind his back. Therefore to see that the matter is adjudicated conclusively and finally I am of the view that I.A.No.9 is fit to be allowed. Accordingly I answer point No.1 in the affirmative and in favour of the plaintiff.

Point No.2:- For the reasons stated in point No.1, following order is passed.

Order

I.A.No.9 filed U/O 6 Rule 17 R/w Section 151 of CPC is hereby allowed.

Plaintiff is hereby permitted to carry out amendment only to the extent sought for in the application.

Plaintiff shall furnish the amended plaint copy to the Court as well as to the other side on or before next date of hearing.

Considering the delay the plaintiff shall pay cost of Rs.500/- to the defendants.

For furnishing of amended plaint copy call on 24-3-2017.

sd/-
IV Addl.CJ, Belagavi