

05.10.2024:

ORDER ON IA No.III

IA No.III is filed under Order 6 rule 17 r/w sec.151 of CPC, by the petitioners seeking permission to amend the FDP petition by inserting the legal heir of the deceased defendant No.5 Smt. Subbakka W/o Bharmaji Motakar as defendant No.5(B) in 2nd page of petition as under;

“ 5 ಬಿ) ಶ್ರೀ ದೇವರಾಜಿ ಭರ್ಮಾಜಿ ಮೋಟಿಕರ,
ವಯಾ: 47 ವರ್ಷ, ಉದ್ಯೋಗ: ವ್ಯಾಪಾರ,
ಸಾ: ಮಟನ ಮಾರ್ಕೆಟ, ನರಗುಂದ, ಜಿ: ಗದಗ.”

2. In the accompanying affidavit to I.A No.III the petitioner No.2 Shri. Vijay Vittal Parandekar has sworn to the fact that he has filed the petition against the respondents for drawing the final decree as per Preliminary Decree passed by this court in O.S. No.338/2010 dated 30-03-2017 and as per the said decree he is entitled for 1/8th share. He further stated that said in 2nd page of the petition the name of legal heir by name

defendant No.5(B) of the deceased Smt. Subbakka W/o Bharmaji Motekar has not mentioned due to typographical mistake and the said mistake crept through oversight and the same is to be inserted in the 2nd page of petition. Hence prayed for allowing the IA No.III.

3. Respondents have not filed any objections to IA No.III.

4. Heard the arguments on both sides and perused the documents on records.

5. Based upon the aforestated facts the following point arises for consideration:

1) Whether the proposed amendment under I.A No.III is necessary for complete adjudication of the matter in controversy? If so what order?

6. My answer to the above points is in the affirmative for the following:

REASONS

7. Under IA No.III petitioners intend to

amend the FDP petition by inserting the legal heir by name defendant No.5B of the deceased Smt. Subbakka W/o Bharmaj Motakar in 2nd page of the petition.

“5B) ಶ್ರೀ ದೇವರಾಜಿ ಭರ್ಮಾಜಿ ಮೋಟಿಕರ,
ವಯಾ: 47 ವರ್ಷ, ಉದ್ಯೋಗ: ವ್ಯಾಪಾರ,
ಸಾ: ಮಟನ ಮಾರ್ಕೆಟ, ನರಗುಂದ, ಜಿ: ಗದಗ.”

8. Admittedly, this case is filed by the petitioners for drawing final decree as per the Preliminary Decree passed by this court in O.S. No.338/2010 dated 30-03-2017. On perusal of the order sheet it is apparent that the case is at the stage of issuance of notice to the respondent No.8. At this stage the petitioners wants to insert the legal heir by name defendant No.5B of the deceased Smt. Subbakka W/o Bharmaji Motakar in 2nd page of the petition.

9. In this case, if the amendment is allowed the right accrued to the respondents would not be defeated as no new case is made out. Under the such circumstances if the application is allowed and the petitioners are permitted to amend the FDP petition as prayed for no prejudice will be cause to

other side. On perusal of proposed amendment it appears that it has become necessary and does not take away the rights accrued to the respondents as no nature of petition suit will be changed. The case would be fully and finally adjudicated for once and all. Therefore, I answer point under consideration in the affirmative and I proceed to pass the following:

ORDER

IA No.III filed by the petitioners U/o.6 Rule 17 R/w 151 of CPC., is hereby allowed.

Petitioners are permitted to amend the petition as prayed for.

For amendment of petition and amended petition by 02.12.2024.

Senior Civil Judge,
Bailhongal

