

ORDERS ON I.A.NO.44

IA.No.44 filed by the applicants under Order I Rule 10(2) r/w Sec.151 of CPC praying to implead them as defendant No.71 and 72.

In support of application, proposed defendant No.71 sworn to a affidavit and pleaded that themselves and plaintiffs are joint family members and schedule properties are their joint family properties. There is no partition in the joint family. They are also entitle for share in the joint family properties, hence, they are necessary parties to the proceedings. During pendency of suit, plaintiffs and their children sold Item No.1, 4 and 8 properties through Sale Deed dated 17.03.2021, hence, annexed application.

Application resisted by the plaintiffs by contending that Yallamma died in the year 17.07.2002, after lapse of 12 years instant application is filed. This shows that application is filed only to drag and protract the proceedings. Applicants are not necessary for the proceedings. Suit filed in the year 2006, hence, prayed to reject the application.

Heard both side and perused materials placed before the court.

Relationship pleaded by the applicants was not denied by the plaintiffs. Plaintiffs simply stated that Yallamma died in the year 2002, applicants filed an application after lapse of 12 years, hence, it is time barred. Objections of plaintiffs will not sustain, because, it is mandate duty of plaintiffs to bring all necessary parties on record. According to applicants, they are also having share in the schedule properties. This fact is not denied by the plaintiffs. Being a co-parceners, applicants are also necessary parties to the proceedings. Only because of delay in filing application, right cannot be rejected, hence, following;

ORDER

IA.No.44 filed by the applicants under Order I Rule 10(2) r/w Sec.151 of CPC is allowed.

Applicants are permitted to come on record as defendant No.71 and 72.

For amendment and for amended plaint.

**II Addl. S.C.J. & JMFC.,
Anekal.**

ORDERS ON I.A.NO.45

IA.No.45 filed by the defendant No.63 under Sec.151 of CPC praying to permit her to file written statement and counter claim.

In support of application, defendant No.63 sworn to a affidavit and pleaded that plaintiffs filed suit against defendants for the relief of partition and consequential reliefs. She was not arrayed as party, after having knowledge of the suit, she voluntarily impleaded in the proceedings. Plaintiffs by giving false family tree, filed false suit. She is also having share in the suit schedule properties, hence, counter claim. If application is allowed, no hardship and prejudice will cause to the plaintiffs. On the other hand, if application is dismissed, she will be put to hardship and injustice.

Application resisted by the plaintiffs by filing written objection by contending that suit filed in the year 2006. PW-1 was examined, instead of cross-examining PW-1, defendants deliberately filing applications. Court without assigning reasons allowing the applications, on the ground of equity. Even sufficient opportunities provided, defendants failed to file written statement and now filed application, after lapse of 15 years, hence, prayed to dismiss the application with exemplary costs.

Heard both side and perused materials placed before the court.

Perused entire order sheet. According to plaintiffs, court without assigning reasons allowing applications, by misusing this opportunity, defendants making one or other applications. The contention taken by the plaintiffs shows that plaintiffs blaming the court for allowing applications. Order sheet discloses that plaintiffs themselves making applications one after another. Plaintiffs failed to take steps even after lapse of 10 years. Plaintiff themselves making unnecessary applications. At the time of filing of suit plaintiffs failed to bring all necessary parties on record. Now persons who are connected to the plaintiffs family making applications and impleading in the proceedings. According to defendant No.63, she is entitle for 1/3rd share in the suit schedule properties. She was impleaded on her application, plaintiffs without making all necessary parties simply filed suit. Plaintiffs also failed to take proper steps. Suit is pending for long period, because of mistake of plaintiffs, not because of defendants. In the year 2019 defendant No.63 filed application to implead her on record. In the year 2022, her application was allowed and in the same year written statement of defendant No.63 is taken as nil. After lapse of 2 years, defendant No.63 wants to file written statement and counter claim. Counter claim is, by praying to allot her share in the suit schedule properties, because of delay of 600 days in filing of written statement, application is rejected, it will force the defendant No.63 to file separate suit, seeking partition, in that case, it will leads to multiplicity of proceedings and further delay in conclusion of dispute. The hardship which may suffer by plaintiffs may be compensated by imposing costs, hence, following ;

ORDER

IA.No.45 filed by the defendant No.63 under Sec.151 of CPC is allowed on cost of Rs.500/-, on the condition of payment of cost. Written statement and counterclaim of defendant No.63 taken on record.

For amendment and for amended plaint.

Call on 10.12.2024.

**II Addl. S.C.J. & JMFC.,
Anekal.**

