

IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this the 15th Day of February, 2022

O.S.No.317/2015

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|------------------------------|---|---|
| 1. Smt. Mala and Others | : | <u>Plaintiffs</u>

(By Sri. A.R. Sreenivas
Reddy, Advocate) |
| V/s. | | |
| 1. Sri. Anjinappa and Others | : | <u>Defendants</u>

(1 to 4 - By Sri. K. Vara
Prasad, Advocate)
(5 - By Sri.
Pradeep .B.N.,
Advocate) |

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**ORDERS ON I.A.No.5**

The defendants No.1, 2 and 4 have filed the I.A.No.5 under Order 6 Rule 17 read with Section 151 of C.P.C and they pray for amendment of written statement to insert Para No.24(a) to 24(h) in their written statement and the proposed amendment of written statement runs almost 3 pages. Briefly stated, the above

defendants proposes to insert amendment of pleadings to the effect that,

*"plaint 'A' schedule is not joint family property, boundaries are not correct, it is the self-acquired property of defendant No.1, 'B' schedule Item No.1(a) was purchased by defendant No.2, Item No.1(b) was purchased by defendant No.1, suit 'C' schedule is standing in the name of 2<sup>nd</sup> defendant and hence, it is her absolute property and its boundaries in the plaint are incorrect, suit 'D' schedule belonged to defendant No.2 and she had bequeathed it in favour of defendant No.3, suit 'E' schedule is standing in the name of one Shwetha and it was inherited by Shreyas and Vignesh and who are not made as parties and suit 'F' schedule belonged to 2<sup>nd</sup> defendant which was gifted by her in favour of her son under a registered gift deed and suit 'G' schedule is not joint family property"*

2. In support of the I.A.No.5, the defendant No.1 has filed affidavit by deposing that, on 25.01.2021 he has filed additional written statement and this Court by its Order dated 31.07.2021 rejected the additional written statement and therefore, in order to give complete details in respect of the properties he intends to amend the written statement and hence, he prays for amendment of written statement.

3. The plaintiffs have filed objections to the I.A.No.5 by contending that, recently defendant No.5 was added in the

above suit as additional defendant by the Orders on I.A.No.2 and subsequent to amendment of plaint to include additional defendant No.5 in the suit, the defendants No.1 to 4 have filed their additional written statement without seeking any permission from the Court and therefore, their additional written statement was rejected by the Court. Thereafter, the defendants No.1, 2 and 4 have filed this I.A.No.5 by misusing the procedure and hence, the plaintiffs have prayed for dismissal of the I.A.No.5.

4. Heard arguments of both sides.
5. The points that arise for consideration are as follows:

**POINTS**

- 1. Whether the defendants show that, in spite of rejection of their additional written statement by this Court they can amend the written statement by way of filing this I.A.No.5 ?**
- 2. Whether the defendants show that, in spite of their due diligence they could not have amended the written statement before settlement of Issues?**
- 3. What Order?**

6. The Court answers to the above points as follows;

**Point No.1 : In the Negative**

**Point No.2 : In the Negative**  
**Point No.3 : As per the final order for the following;**

**REASONS**

7. **Point No.1**:- The perusal of the order sheets in the above suit show that, the Predecessor in the Office has allowed the I.A.No.2 by Order dated 12.11.2019 and he has granted permission for proposed defendant No.5 to come on the record. Thereafter, the defendants No.1, 2 and 4 have filed additional written statement on 25.01.2021 and by filing I.A.No.4, the plaintiffs have prayed for rejection of additional written statement of the defendants No.1, 2 and 4 by contending that, without seeking permission, the defendants No.1, 2 and 4 have filed their additional written statement. This Court has called for filing objections of defendants No.1, 2 and 4 to the I.A.No.4 of the plaintiffs seeking rejection of additional written statement of the above defendants. But, in spite of giving sufficient opportunities to the defendants No.1, 2 and 4 to file objections to I.A.No.4, they have not filed any objections. Therefore, on 31.07.2021 this Court has rejected the additional written statement filed by the defendants No.1, 2 and 4 and posted the case for framing of Issues. On 23.08.2021 this Court has framed the Issues and it was only on the next date of hearing i.e., on 24.09.2021 the above I.A.No.5 was filed by the defendants No.1, 2 and 4.

8. At the time of filing of I.A.No.5 for amendment of plaint, the above defendants have not furnished any documents in support of their contentions that, certain properties are self-acquired properties of certain persons. Without support of any

such documents, the proposed amendment application was filed by the above defendants after rejection of their additional written statement. In other words, after this Court has rejected their additional written statement by Order dated 31.07.2021, the above defendants have filed the I.A.No.5 by seeking to bring the same pleadings by way of amendment of written statement. In the earlier written statement filed by these defendants they have contended that, already a settlement was effected in the family and accordingly, separate katha was entered and by considering the said pleadings, the Court has framed the Issues.

9. In the affidavit annexed to the I.A.No.5, the defendant No.1 did not say anything about how they could not plead the proposed amendment at the time of filing of their written statement and the defendant No.1 has only stated that, since his additional written statement was rejected by the Court he is seeking amendment of written statement to bring the very same pleadings on record as stated in his rejected additional written statement. Therefore, the defendants could not show any bonafide reasons that, in spite of exercising due diligence they could not have brought the proposed amendment of the written statement before framing of the Issues.

10. Now, without challenging the orders of this Court on the I.A.No.4 dated 31.07.2021 and without production of any documents in support of proposed amendment of written statement, the I.A.No.5 is filed after framing of the Issues and therefore, the Court answer both the **Points No.1 and 2 in the Negative.**

11. **Point No.3**:- For the discussion made on the above Points, the Court proceeds to pass the following:

**ORDER**

**The I.A.No.5 filed by the  
defendants No.1, 2 and 4 under  
Order 6 Rule 17 read with Section  
151 of C.P.C. is hereby dismissed.**

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 15<sup>th</sup> day of February, 2022).

**(MADHUSUDHANA D.K.)  
Prl. Senior Civil Judge & JMFC.,  
Devanahalli.**