

01-08-2024

Plt. - R.S.N.,

Def.3(a to d) - V.U.,

Def. - A.R.S.R.,

LRs of Def.1 - A.R.S.R.,

ORDERS ON I.A.No.XIX

The instant application has been filed by the counsel for the defendant U/o.VI Rule 17 R/w.Sec.151 of C.P.C seeking amendment of written statement.

2. In the affidavit, the defendant has stated that the plaintiffs have filed the present suit for the relief of Declaration and other allied reliefs. On the basis of available documents, the defendant has given instruction to her counsel to file the written statement. Much prior to execution of the Will, the father of the plaintiff by name K. Munivenkatappa in the year 1984 handed over the physical possession of the suit schedule property in favour of the defendant and ever-since the defendant is in peaceful possession and enjoyment of the same. Consequently, on 31.01.1984 K. Munivenkatappa also executed Power of Attorney in favour of the defendant by authorizing him to do all acts and things and the said Power of Attorney clearly shows that K. Munivenkatappa has executed the Will voluntarily. Due

O.S.No.2003/2006

to non- availability of the said Power of Attorney and due to ignorance the defendant could not instruct the counsel to plead the above aspects. The defendant has been suffering chronic health problems from last one year. The defendant had been bedridden and recently while searching for the medical documents the defendant found the above said Power of Attorney. The defendant has been defending the case diligently and due to aforesaid reasons the defendant could not plead the above aspects in the written statement. The application is filed immediately after obtaining the documents. Hence, the application.

3. The counsel for the plaintiffs has not filed any objection to the present application.

4. Heard both the sides. The counsel for plaintiffs filed written arguments.

5. **The following points would arise for my consideration:**

1. Whether the defendant has made out grounds to allow the application for amendment of written statement ?

2. What order?

6. My answer to the above points are as follows:

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

O.S.No.2003/2006

Point No.2 : **As per final Order
for the following :**

R E A S O N S

7. **Point No.1:** The instant application came to be filed on 18.10.2016 for amendment of written statement on the ground that the defendant could not instruct his counsel about the alleged Power of Attorney dated 31.01.1984 and other facts proposed to be pleaded in the written statement due to ignorance and non-availability of the documents. The application was initially rejected by this court and the matter was remanded back by the Hon'ble High Court of Karnataka with a direction to dispose of the matter with considered order. The application is not opposed by the plaintiffs by filing objection. However, in the written argument the counsel for the plaintiff has contended that the defendants have filed the written statement on 13.12.2006 and nowhere pleaded about the GPA. The GPA said to have been executed on 31.01.1984 and the same is created document. The defendant has not assigned any reason for not making any attempt to amend his written statement earlier. Mere ignorance cannot be a ground to allow the application for amendment. The plaintiffs have filed an application seeking to direct the defendant to produce the original Will dated 12.10.1990 and the defendant did not produce the same. The defendant has not approached the court with clean hands.

O.S.No.2003/2006

8. In view of the rival contentions, on going through the records of the case, it appears that this is a suit filed by the original plaintiff seeking declaration that the Will dated 12.10.1990 said to have been executed by late K. Munivenkatappa in favour of the defendant is null and void and not binding upon the plaintiff. They have also sought to declare him as the absolute owner of the suit schedule property and also for consequently relief of Permanent Injunction. The suit came to be filed in the year 2006. The defendant kept quiet for almost 10 years and suddenly came up with the present application on 18.10.2016 seeking to amend the written statement on the ground that K. Munivenkatappa also executed a Power of Attorney dated 31.01.1984 in his favour. The reasons assigned is that the same was not produced and pleaded due to the ignorance of the defendants and non-availability of the document. However, the defendant has not stated that what had prevented him to plead about the execution of GPA dated 31.01.1984 in the written statement. The learned counsel for the plaintiff has rightly contended that the mere ignorance cannot be a ground to allow the application for amendment. I am of the considered opinion that the reasons assigned by the applicants for non-production of the document and non-pleading about the said aspects is not properly explained in the application. It is pertinent to note that as per the defendant the Power of Attorney was executed on 31.01.1984. It is the specific case of the defendant that a Will has been executed by K. Munivenkatappa in his favour in the year 1990. Under such

O.S.No.2003/2006

circumstances, it is the duty of the defendant to assign proper and believable reasons to plead the facts about the Power of Attorney dated 31.01.1984. Accordingly, the defendant has failed to establish grounds to allow the amendment of written statement at this stage. Hence, I answer **Point No.1 in the Negative.**

9. **Point No.2** : In view of the above findings, this court proceed to pass the following:

ORDER

I.A. No.XIX dated 18.10.2016 filed
by the defendant U/o.VI Rule 17
R/w.Sec.151 of C.P.C for amendment
of written statement is rejected with
cost of Rs.1,000/-.

**The matter posted for further
chief of PW.1 finally by:
13.08.2024.**

Sd/-
**Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**