

**21.03.2024**

**ORDERS ON I.A.NO.2/2023 DATED 22.08.2023**

The plaintiff has filed the I.A.No.2/2023 under Order 6 Rule 17 R/w. Sec.151 of C.P.C. by seeking amendment of the *plaint to rectify the name of the plaintiff as Rathnamma instead of Rathnanna & to add pleadings about Registered Sale Deeds dated 22.12.1999, 06.09.2004, 06.01.2005, 09.11.2001, 27.06.2005 and related transactions and also to add Prayer No.4 about Declaration in respect of these Sale Deeds and to include the Items No.2 & 3 by way of amendment of the plaint.*

2. In support of the I.A.No.2/2023, the plaintiff Smt. Rathnamma has filed her affidavit by deposing on oath. In brief, she has contended that, the above suit was filed in the year 2006 but, this suit was dismissed for non-prosecution by Order dated 18.11.2009 and thereafter, it was restored in Misc.No.13/2010 by Order dated 13.02.2020. In the month of March 2020, the plaintiff came to know about the illegal transactions made by the defendants in favor of the impleading defendants and due to non-securing of documents, the plaintiff could not seek the relief against the above Sale Deeds and she was not able to include the Items No.2 & 3. For these reasons, the plaintiff has prayed for allowing of her I.A.No.2/2023.

3. To the I.A.No.2/2023, the defendant No.7 has filed his detailed objections. In brief, he has submitted that, the above amendments sought by the plaintiff were taken place in the year 1999, 2004 & 2005 respectively and therefore, the relief are barred under the Provisions of Section 6(1) of the Hindu Succession Amendment Act, 2005 as all these transactions were taken place prior to 20.12.2004. Therefore, the defendant No.7 has prayed for the dismissal of the I.A.No.2/2023.

4. I have heard the arguments of the rival parties.

5. On appreciation of the facts leading up to filing of the I.A.No.2/2023, the following Points are arisen for my consideration:

**POINTS**

***1. Whether the plaintiff shows that, in spite of her due diligence, she could not have raised the proposed amendment and the proposed amendment is necessary for complete and final adjudication of the dispute?***

***2. What Order?***

6. Now, my answers to the above Points are as follows:

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

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

**REASONS**

7. **Point No.1:** I have already narrated the facts and circumstances surrounding the I.A.No.2/2023 at the inception of the above Orders and therefore, it is needless to reiterate the same again and again.

8. The above suit was filed for the relief of Partition & Separate Possession on 25.08.2006 and as contended by the plaintiff, this suit was dismissed for non-prosecution by Order dated 18.11.2009 and thereafter, it was restored by Order dated 13.02.2020. The records show that, in spite of the suit being restored, the Issues are not yet framed by the Court. Therefore, by virtue of first portion of the Provisions of Order 6 Rule 17 of C.P.C., the plaintiff is entitled for the amendment of the plaint sought before commencement of the trial. The counsel for the defendant No.7 has argued that, the plaintiff is seeking the relief which are barred by limitation and also by way of Amended Section 6 of the Hindu Succession Act, 2005. Since the defendant No.7 is having opportunity to file his additional written statement on the amended plaint and therefore, even if the plaintiff is permitted to include the relief sought in the I.A.No.2/2023, no prejudice will be caused to the defendant No.7 as he can file his additional written statement. Therefore, by considering these two factors into account, I am

of the considered opinion that, by way of imposing costs on the plaintiff, she is entitled for amendment of the plaint. Accordingly, I answer the **Point No.1 in the Affirmative.**

9. **Point No.2:** For the above discussion, I proceed to pass the following:

**ORDER**

***The I.A.No.2/2023 filed by the plaintiff under Order 6 Rule 17 R/w. Sec.151 of C.P.C. is hereby allowed by imposing costs of Rs.1,000/- payable to the defendant No.7.***

***The plaintiff is directed to amend the plaint and to file amended plaint in the Office before the next date of hearing.***

***Posted for payment of costs and to file additional written statement of the defendant No.7 by 21.06.2024***

*(Dictated to the Typist directly on computer and corrected and then pronounced by me in the open Court on 21<sup>st</sup> March 2024).*

**Prl. Senior Civil Judge & J.M.F.C.  
Devanahalli.**