

22-04-2022

ORDERS ON I.A.NO.5

The plaintiffs have filed I.A.No. 5 U/O. 6 Rule 17 R/w. Sec.151 of C.P.C. by seeking amendment of Para No.7 to insert Para No.7(a) to 7(c) in the plaint. Briefly stated, the plaintiffs intend to bring amendment of plaint to plead that, *defendant No.1 has requested the husband of plaintiff No.1 for Rs.1,50,000/- during February 2012 and also requested for adjustment of said amount towards balance of sale consideration as per sale agreement dated 06-10-2010 and at the instructions of her husband, the plaintiff No.1 has issued a cheque in favor of defendant No.1. The husband of 1st plaintiff was died in the year 2018 before filing of the suit and 1st plaintiff was in depression and mental agony and therefore, she has not pleaded the said averments. The defendant No.1 has received Rs.1,50,000/- through Bank under the cheque issued by the 1st plaintiff.* Therefore, the plaintiffs have prayed for allowing the above I.A.No. 5 by permitting them to amend the plaint to include Para No.7(a) to 7(c) in the plaint.

2. The defendants No.1, 2 and 5 have filed objections to the I.A.No. 5. The main objections of the defendants is that, the plaintiffs have falsely contended about execution of sale agreement by receiving Rs.8,00,000/- from the 1st plaintiff's husband. The plaintiffs have not pleaded about payment of Rs.1,50,000/- by the plaintiff's husband in favor of 1st defendant and the above application is filed after lapse of 8 years from the date of agreement and therefore, the above defendants have prayed for dismissal of the I.A.No. 5.

3. The plaintiffs counsel and counsel for defendants No.1, 2 and 5 have addressed arguments on I.A.No. 5. The plaintiffs relied on the Bank statement extract of 1st plaintiff showing payment of Rs.1,50,000/- by Bank transaction on 18-02-2012.

4. The Point that arises for consideration before the Court is **Whether the plaintiffs show that, in spite of their due diligence they could not have raised the proposed amendment at the time of filing of the suit?**

5. The answer of the Court to the above point is **in the Affirmative** for the following:

REASONS

6. The above suit is filed by the plaintiffs on 14-08-2018 and the defendants No.1, 2 and 5 have appeared in the case by receiving summons on 16-01-2019. But, until 06-12-2021 the above defendants did not file any written statement in the suit and it is only on the said date, the above defendants have filed their written statement by filing I.A.No. 4 for condoning delay in filing their written statement.

7. In the affidavit filed in support of I.A.No. 5, the plaintiff No.1 has deposed on oath that, after the death of her husband she was going through the documents and she came to know about payment of Rs.1,50,000/- to the 1st defendant and therefore, she has sought for amendment of plaint to bring the above pleadings in the plaint. Though the defendant No.1, 2 and 5 have contended that, there is a delay of 8 years in filing application for amendment but, the said averment is not correct as the sale agreement was executed on 06-10-2010 and suit was filed only on 06-10-2018. The defendants have already taken the defense about suit

being barred by limitation and the Court has not yet framed the issues and therefore, as per the 1st part of the provisions of Order 6 Rule 17 of C.P.C. the plaintiffs are entitled for amendment of plaint before framing of issues subject to payment of costs to the other side. Therefore, **Point No.1 is answered in the Affirmative.**

8. For these reasons the Court proceed to pass the following:

ORDER

I.A.No. 5 filed by the plaintiffs is allowed by imposing cost of Rs.2000/- payable to the defendant No.1, 2 and 5 for the reason of delay in bringing amendment to the plaint.

The plaintiffs are directed to carry out the amendment of plaint and furnish amended plaint on the next date of hearing.

Call on for additional written statement.

Call on: 30-06-2022.

O.S. No. 589/2018

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