

ORDERS ON I.A.NO.VII

Plaintiff has filed I.A.No.7 under Order VI Rule 17 of CPC., seeking permission to amend the plaint.

2. The GPA holder of the Plaintiff has sworn to an affidavit in support of this I.A and contended that plaintiff has filed this suit for declaration and permanent injunction. Suit schedule

properties were granted to one Venkatarayappa S/o Venkataramaiah. Defendant No.1 to 4 are strangers to the plaintiff and they have created encumbrance by way of Gift deeds dated:27.12.2021. Venkatarayappa died intestate but has adopted his son by name K.N.Devendraswamy. Said adopted son has sold suit schedule properties to one A. S.Mustaq Ali under Registered sale deed dated:05.09.1969. Said Mustaq Ali in turn has sold said properties to one Kroshid Dorab Nariman under Registered sale deed dated:05.11.1969. Said Nariman and his son have partitioned their family properties on 05.06.1986 in which 'A' schedule filed to the share of son by name Burjor Dorab Nariman. Later he has alienated 'A' schedule properties in favour of plaintiff for his legal necessities on 30.09.1989. In order to cheat the plaintiff, the defendant No.1 has created sale deed and the same is within the knowledge of plaintiff. Hence, plaintiff is intending to amend the plaint to insert the prayer that she is the absolute owner in possession of suit schedule properties under sale deed dated:30.09.1989 and also insert the averments of said sale deed and fraud committed by the defendant in the body of the plaint as para No.6(a). The proposed amendment will not change the nature of the suit. If the application is allowed no hardship or injury will be caused to the other side on the contrary if the I.A is dismissed plaintiff will be put to irreparable loss and injury. Hence, it is just and necessary to include proposed amendment in plaint. Hence, prays to allow the I.A in the interest of Justice and equity.

3. Defendants have filed objection to this I.A and denied the entire I.A and affidavit averments as false and reiterated the averments of written statement and further contended that plaintiff has filed this IA seeking amendment after a significant

delay especially after commencement of the trial. The plaintiff has to demonstrate inspite of due diligence she could not have sought the amendment at the earlier stage. There is malafide intention in filing this IA just to drag on the matter. Hence, prays to dismiss the I.A in the interest of justice and equity.

4. The points that arise for my consideration are as follows;

1. Whether I.A.No.VII filed by the plaintiff
under Order VI Rule 17 of CPC., is
deserves to be allowed?

2. What order?

5. Heard the arguments and perused the materials placed before me.

5. My findings to the above points are as follows;

POINT No.1 : In the Affirmative

**POINT No.2 : As per final order
for the following;**

REASONS

6. POINT NO.1: Plaintiff has filed this suit for declaration and permanent injunction. Plaintiff has not yet led evidence. On perusal of the entire records it goes to show that plaintiff has filed this suit challenging the registered Gift deeds dated:27.12.2021 executed by defendant No.1 in favour of defendant No.2 to 4. In para No.6 the plaintiff has specifically pleaded that she has acquired right and title over the suit schedule properties under Registered sale deed dated:30.09.1989 and alleged fraud said to committed by the defendants. Now she is intending to insert para No.6(a) which is in continuation of the contentions taken already in para No.6 which does not alters the nature of the suit or cause of action. The plaintiff is intending to insert one prayer to declare

that she is the absolute owner in possession of the suit schedule properties under Registered sale deed dated:30.09.1989. Since this is a suit for declaration and plaintiffs have challenged the various gift deed executed between the defendants and plaintiff has already specifically pleaded that she is the absolute owner in possession and enjoyment over the suit schedule properties under Registered sale deed dated:30.09.1989, she shall be given an opportunity to insert declaratory relief in respect of title based on said sale deed. Moreover trial has not yet commenced and therefore there is no question of taking away admissions or creating ambiguity. Plaintiff has proved that insertion of the 1st amendment is just and necessary for proper adjudication of the matter in dispute. Considering the delay caused by the plaintiff I.A shall be allowed on imposing cost. Hence, I Answer **Point No.1 in the Affirmative.**

7. POINT No.2: For the aforesaid reasons, I proceed to pass the following;

: ORDER :

I.A.No.VII filed by the plaintiff under Order VI Rule 17 of CPC., is hereby allowed on cost of Rs.300/-.

To carryout amendment and furnish amended plaint and to file written statement-22.04.2026.

(SHILPA.H.A)
Senior Civil Judge &

JMFC.,
Doddaballapura.