

ORDER ON I.A. U/O.6 RULE 17 OF C.P.C.

FILED BY THE DEFENDANT NO.4

The defendant no.4 has filed I.A. U/O.6 Rule 17 of C.P.C. and sought for amendment of written statement as mentioned in the application. In support of the I.A. defendant no.4 has filed affidavit and prayed to allow the application.

2. On the other hand, the plaintiff counsel has filed objections to I.A. in detail and prayed to dismiss the application.

3. Heard both side counsels and perused the materials on record. The points that would arise for my consideration as follows:

- 1) Whether the amendment sought by defendant no.4 is necessary for the purpose of determining the real questions in controversy between the parties to the suit?
- 2) Whether I.A. filed by defendant no.4 deserves to be allowed?
- 3) What order?

4. My answer to above points is mentioned as per order below for the following;

REASONS

5. **Point No.1 to 3:-** All the points are taken up together for consideration in order to avoid repetition of facts and reasons. The suit is filed by the plaintiff seeking for partition of plaint schedule property against the defendants. The defendant no.4 is impleaded in the suit on application by the plaintiff U/o.1 Rule 10(2) of C.P.C. Thereafter the defendant no.4 had filed written statement. However, now by filing the

present application defendant no.4 sought for amendment of her written statement by inserting the counter claim. The defendant no.4 submitted that the proposed amendment sought was left out by oversight without proper instruction to her counsel. Now with due diligence, she noticed same and has filed the application for amendment .

6. On the other hand, the plaintiff has filed objections in detail and submitted that defendant no.4 is the wife of defendant no.1(a) and she has no source of income, entire properties of plaintiff and defendants are in possession of defendant. They are earning lot of income from suit property in which the plaintiff is having legitimate share. The defendant no.1(a) being father of family in order to deprive the share of the plaintiff in item no.6 and item no.7 has purchased the same. The nature of suit will change amendment would exceed the pecuniary jurisdiction of the Court. Since the defendant no.4 has sought for declaration by counter claim.

7. Perused the entire records. The plaintiff has filed the suit for partition of plaint schedule property. The defendant No.4 had filed written statement earlier. But the now sought for amendment of written statement by inserting counter claim with the relief of declaration and injunction on the written statement schedule property. The defendant no.4 is the wife of defendant no.1(a). She claims that she has purchased the written statement property out of her own income. It is her self acquired property. However plaintiff states that defendant no.1(a) being Kartha of the joint family has purchased the same. Hence, the plaintiff has his share over the written statement property. On perusal of the plaint, it reveals that land bearing Sy.No.340/9, measuring 1 acre 12 guntas and land bearing Sy.No.7/2 measuring 30 guntas both are situated at Banavathi Village are at item no.6 and 7 of the plaint schedule property. For the same item now defendant no.4 is seeking

declaration by way of proposed amendment of written statement. It appears that both the plaintiff and the defendant no.4 are claiming right over the item no.6 and item no.7 of the plaint schedule property. Hence, no prejudice would cause to plaintiff if amendment as sought by defendant no.4 is allowed. More over with regard to pecuniary jurisdiction of Court, same shall be decided once the amendment is carried out and valuation slip of defendant no.4 on written statement property is furnished and after the defendant no.4 by furnishes the counter claim value and Court fee. Further both the plaintiff and defendant no.4 claims on the item no.6 and 7 of plaint schedule property. Hence, in order to avoid multiplicity of proceedings and for the purpose of determining the real questions in controversy between the parties to the suit and in the interest of justice the above I.A. deserves to be allowed. Hence the following;

ORDER

I.A. U/O.6 rule 17 of C.P.C. filed by the defendant no.4 is hereby allowed.

The defendant no.4 is hereby permitted to carryout the amendment as sought for in the application.

For amendment and amended written statement.

Call on

**Addl. Civil Judge & JMFC,
Doddaballapura.**