

ORDER ON IA NO. 5

The counsel for defendant No. 13 has filed the application Under Oder 6 Rule 17 R/w Section 151 of CPC seeking to according permission to amend the written statement as proposed below to know the real controversy between the parties.

PROPOSED AMENDMENT SOUGHT FOR:

“In written statement page No. 3, para No. 12, Line No. 3 after the word properties permit to add, :under un-registered partition deed dated: 23.09.1979”.

2. In the affidavit accompanying the application. It is stated that the recently on verification of records and pleading he came to know the through his counsel that while filing written statement due misconception or otherwise the proposed plea has not taken and such he is instructed to file this application. The present amendment is clarificatory, explanatory in nature and as such the said amendment is very much necessary to clear the controversy between parties and the same will not change the nature of defence already filed. Hence, prays to allow the application.

3. On the other hand plaintiffs in their objections have Denied all the application averments. And the plaintiffs in their objection contended that, the application filed by the defendant is not maintainable either in law or on facts, the contents of the application are all false and hereby strictly denied. The defendant No. 13 already filed his written statement now he has intentionally filed this application for

amendment of the written statement is only for dragon proceedings and for harass to plaintiffs and also he has not produced any piece of documents regarding proposed amendment. The defendant had filed this application only for harass the plaintiffs, the case is now in the stage of evidence at this time the application is not maintainable. Hence, prays to reject this application.

4. Heard counsel perused the application and affidavit.

5. The following points arised for my consideration.

POINT

Point No.1. Whether the proposed amendment is necessary to know the real controversy between the parties?

Point No. 2. Whether the defendant No. 13 establishes the due diligence?

Point No. 3. What order?

6. My findings on the above points are the following;

Point No. 1. In the affirmative.

Point No. 2. In the affirmative.

Point No. 3. As per the filing order.

REASONS

7. **Point No 1 and 2** : These two points are taken up together for the common discussion the avoid repetition of acts. This is suit filed by the plaintiffs for the relief of partition and separate possession with respect to suit schedule property. Now the instant application is filed by the defendant No. 13 when the case was posted for further cross cross of PW-1. It is pertinent to note that the court has to be vigilant at to the time of deciding the application filed for

amendment of pleading after conclusion of trial. It is a settled preposition of law that the party proposes to amend the pleadings has to establish despite of due-diligence he could not have brought the amendment for the proper adjudication of the matter in controversy.

8. Now, the defendant No. 13 is seeking to the proposed amendment sought for by defendant No. 13 does not take away the judicial admissions not will it gives rise to a new cause of action. Hence, the instant application filed by the defendant No. 13 is based on the pleading which are already narrated in their written statement. No doubt there is an inordinate delay in filing the instant, but the same cannot be the whole reason for the rejection of the same when delay can be condoned by imposing adequate cost in view of the same. Hence, I answer **Point No. 1 and 2 are in the Affirmative.**

9. **Point NO.3:** in the light of answering to the Point No.1 and 2, I proceed to pass the following;

ORDER

I.A No. 5 filed by the defendant No. 13
U/o 6 rule 17 R/w Sec.151 of CPC is hereby
allowed on the cost of Rs. 800/-.

For amendment and amended W/S.

Call on: 09.02.2024.

27.01.2024.

**Addl. Civil Judge and J.M.F.C
Shidlaghatta.**