

Orders on I.A.No.10

The plaintiff has filed this application U/o.6 R.17 of CPC seeking permission to amend the plaint para No.5 by adding para No.5(1) and 2 and also to add corresponding prayer column with respect to the alleged will executed by the deceased defendant No.1 on 27.08.2018.

The plaintiff has submitted that, during pendency of the suit his father the defendant No.1 died on 30.09.2022 before that, he has bequeathed his 1/6th share in suit schedule properties in his favour. As such he has contended that by virtual of will he is entitled for 1/6th share of his father besides his own share. As such he argued that, proposed amendment is just and necessary.

The defendants No.6 to 10 have filed objections through advocate thereby submitted that,

the plaintiff has created a will as if it was executed by his father late Narasimhappa. They have further submitted that, this court has already issued temporary injunction order against the defendants restraining them from alienating the suit schedule properties in any manner. The suit is till pending therefore there was no occasion for defendant No.1 to execute the will. Therefore they have prayed to reject the application as the proposed amendment is not relevant.

The following point arises for determination.

1. Whether the plaintiff has satisfied that, proposed amendment is just and necessary.

I have heard the learned advocates and perused the records. My finding to the above point is in affirmative for the following:

REASONS

The learned counsel for Sri.GCP appearing for plaintiff has vehemently argued that, there was no prohibition for defendant No.2 bequeath his undivided interest over suit

schedule property in favour of any body. Since the plaintiff has taken care of his father till his death as such the defendant No.1 has executed a testamentary document in favour of applicant. Whereby the learned counsel has further argued that, let the plaintiff be allowed to prove his case. Hence prays to allow the application.

The learned counsel for the defendants Smt. TSG has argued that, the will dt.27.08.2018 is neither genuine nor it is the last will of deceased defendant No.1. The plaintiff has created said will to dupe the rights of the

defendants over the suit schedule property. Moreover there is inordinate delay of 9 months in filing the application for amendment that too without any valid reason hence prayed to reject the application with cost.

It is well settled law even enshrined U/Sec.30 of the Hindu Succession Act, a Hindu may dispose of his undivided interest in the joint family property by a testamentary document. Further it is well settled law that, a will need not be a register instrument. However the plaintiff has contended that, his father as he was in his care and custody, has executed a will on 27.08.2018 in presence of witness and got it registered before the sub registrar Hiriya.

It is also well settled law that, there is no bar to execute a testamentary document like a will even a temporary injunction order

restraining the defendants from alienating the disputed property is in force because will has to be proved in accordance with law and mere execution of said document does not by itself give any right to the beneficiary. Therefore said T.I order has no application to the will.

The plaintiff has contended that, he has got rights over the undivided share of his father in suit property by virtue of the will. In order to enable him to prove his case it is necessary to permit him to amend the body of the plaint and also prayer column. Since it is his responsibility to prove due execution of the will. In this background of the matter the proposed amendment will not change the nature of the suit nor it will give any advantage over the defendants. On the other hand the proposed amendment is just and necessary to adjudicate the rival claims between the parties. It is

needless to mention here that, as rule the defendants will be having equal opportunity to file additions W/S. Hence the application deserved to be allowed. In the result following:

Order

The I.A.No.10 filed by the plaintiff U/o.6 R.17 of CPC is allowed.

Consequently the plaintiff is permitted to carryout necessary amendment within 7 days from this order and shall furnish amended plaint also. For compliance by 04.09.2023.

Sr. Civil Judge & JMFC.,
Hiriyur.