

ORDERS ON IA.No.27

Application U/o VI rule 17 of CPC filed by defendant No.2(a) and 3 to amend their written statement. The said application is supported by an affidavit sworn by defendants.

On the other hand objection filed by plaintiffs.

Heard both side. Perused the material on record.

This case is remanded back by the appellant court for fresh trial. Then the defendants appeared and filed this application for amendment of their written statement.

It is submitted by the defendants that the plaintiff filed suit for declaration and partition. The suit was decreed and against the said judgment the defendants preferred appeal. The appeal was allowed and remanded the case for trial with a direction to allow the parties to amend the pleadings and to frame additional issues and to implead necessary parties and to dispose the

suit afresh by giving opportunity to lead evidence for both parties.

The proposed amendment is sought by defendant as they produced documents before the appellate court in IA filed U/o 41 rule 27 of CPC, the same was allowed and the situation has arisen for defendant to include the contents about the partition and allotment of share between the Thimmappa, Bhogappa, Hanumanthappa and Sanna Thimmappa in the year 1953. Therefore, the proposed amendment is necessary to adjudicate the case judiciously. Hence, filed this application and prays to allow the application.

On the other hand, the plaintiff filed objection stating that the application is barred by law of limitation. The proposed amendment sought by the defendants is not necessary. The defendants is already marked the partition deed as Ex.D56. The defendant has not made out sufficient reasonable circumstances to allow the application. Further it is submitted that there is no direction by the appellant

court permitting the defendant to amend the written statement. Hence, application is not maintainable. Hence, prays to dismiss the application.

It is to be noted that the defendant filed this amendment application to amend the written statement to say about the earlier partition and suit is bad for non inclusion all properties. It is main contention of the plaintiff is that the appellant court not directed to defendant for amendment.

On perusal of the appellant court order in RA.No.6/2020, it is specifically directed the trial court to permit the parties to file the pleadings and additional pleadings and to frame necessary additional issues. It means the defendant can file application for amendment of his written statement. It is to be noted that the amendment sought by the defendant will not effect the nature of the case. If defendant is not permitted to amend the written statement, he will be put in to great hardship and inconvenience. On the other hand no prejudice will be caused to the other side. Hence, in the interest of

justice and equity, it is just and necessary to allow the application. Hence, I proceed to pass the following;

ORDER

IA.No.27 an application under order 6 rule 17 of CPC filed by the defendant No.2(a) and 3 is hereby allowed.

The defendant is permitted to amend the written statement as prayed and directed to amend the written statement and to furnish the amended written statement on or next date by 31/10/2023.

**Senior Civil Judge & JMFC.,
Hosadurga.**