

ORDERS ON IA.NO.IX

The defendant No.4 has filed I.A.No.IX under Order VI Rule 17 R/w Sec.151 of CPC to amend the plaint.

Proposed Amendment :

“9 (A) The first defendant is the only male child of Doddaramaiah and Maniyamma. The property devolved to the share of first wife’s children has been sold to Ramaiah S/o Chikkaramaiah of Heggotara Village by the first defendant. The said property is now standing in the name of Renuka W/o Mahesha, the daughter-in-law of Ramaiah. The plaintiffs have not made party to said Ramaiah and Renuka and further they have not included property Assessment No.355, New No.413 standing in the name of Renuka W/o Mahesha. Hence this suit is bad for non-joinder of necessary parties and non-inclusion of

all the properties and hit by order 2 Rule 2 of CPC.”

2. The defendant No.4 has filed his affidavit and contended that, the plaintiffs are children of Doddaramaiah, they have filed this suit seeking partition in the suit schedule properties claiming to be ancestral properties. But in the plaint the plaintiffs purpose full not included the property fallen to the share of first wife of Doddaramaiah and they sold property to one Ramaiah S/o Chikkaramaiah on 11.9.1986 by defendant No.1. Now property standing in the name of Renuka W/o Mahesha, who is daughter-in-law of Ramaiah. The said facts have been informed to his counsel and he has not pleaded in the written statement. Due to inadvertence she was unable to collect the documents at the time of preparing written statement and as such the specific contention not taken in the written statement. Therefore, the defendants want to amend their written statement as sought in the application. The proposed amendment is not withdraw of admission or not introducing new things. For effective adjudication the said amendment is required. If the amendment application is allowed no prejudice will be caused to the plaintiff. Hence, prays to allow the application.

3. The counsel for plaintiff filed objection and contended that the defendants have filed this application with an intention to drag the matter. The matter has been posted for further cross examination of P.W.2 and to fill up lacuna in their case this application has been moved by the defendants. The contention taken in the proposed amendment was already pleaded in the written statement and they filed application with an intention to drag the matter. No such valid reasons asserted by the defendants in their application and as such application liable to be rejected.

4. Heard on both side.

5. The point that would arise for my consideration is;

“Whether defendant No.4 made out grounds to amend the written statement as sought in the application”?

6. My answer to the above point is in the “Affirmative”, for the following;

: REASONS :

7. Point No.1:- The matter has been posted for cross of P.W.2 after conclusion of evidence of P.W.1. The proposed amendment is specific contention of the defendants with regard to nature of suit schedule property and non-joinder of necessary party. In the written statement at para 12, the defendant No.4 contended that, this suit is bad for non-joinder of necessary party. The

plaintiff contended that the defendants have already took said contention in their written statement and they intending to amend their written statement to drag the matter. They have filed application with an intention to fill up lacuna in their case.

8. I have gone through written statement filed by the defendant No.4 and proposed written statement. The defendant No.4 intending to plead additional written statement by showing name of necessary party who is not impleaded by the plaintiff. Therefore, permitting the defendant No.4 to amend his written statement at this stage would not cause any prejudice to the plaintiff. Moreover, the entire burden lies on the defendant No.4 to establish facts after amendment of written statement. The plaintiffs will get opportunity to cross examine the defendant No.4 on the contention taken by him in his written statement. By considering relief claimed by the plaintiffs and facts of the case if this application is allowed no such hardship would be caused to the plaintiffs. Hence, I proceed to pass the following;

ORDER

I.A.No.IX filed by the defendant No.4 under Order VI Rule 17 R/w Sec.151 of CPC is hereby allowed.

The defendant No.4 is directed to amend the written statement and

OS.No.102/2014

furnish amended written statement
before next date of hearing.

Call on 06.01.2025.

Prl.Civil Judge & JMFC.,
Chamarajanagar.