

ORDERS ON IA NO.1(a) FILED
UNDER ORDER VIII RULE 9 OF C.P.C

The learned counsel for the plaintiffs has filed this application seeking permission to file rejoinder on behalf of the plaintiffs to the written statement of the defendant No.1 in the case.

2. In support of this application the plaintiff No.2 has filed affidavit. In his affidavit he has stated that they have jointly filed the suit against the defendants with respect to suit schedule properties for the relief of partition and separate possession of their legitimate 1/7th shares in 'A' schedule property and the declaration their absolute ownership of the 'B' schedule property and such other reliefs. The defendant No.1 filed written statement in which it is pleaded that suit 'B' schedule property is also joint family property of the plaintiffs and the defendants and also claim suit schedule item No.6 is only belongs to him and the plaintiffs have no rights and share in the said property. Further pleaded that in the written statement that Sy.No.24 of Talikatte Village measuring 2 acres 32 guntas is also belongs to the joint family which is not included in the suit schedule of the case in which also they claimed for allotment of share to him. The said land bearing Sy.No.24 of Talikatte Village is not the joint family property and it was granted to husband of the plaintiff No.1 namely Basappa. It is the self acquired property of the said Basappa and after his demise

themselves only acquired rights under inheritance as they are the legal heirs of the their father Basappa. So they have to say the above facts as answer to the written statement of the defendant No.1 by way of rejoinder. Otherwise there will be no defence on their behalf to the said claim of the defendant No.1 in their property. Therefore, it is necessary to file rejoinder and reply to the written statement of the defendant No.1. Hence, he prays to allow the application.

3. On the other hand the learned counsel for defendant No.2 has filed detail objections. In the objection he has denied the entire averments made in the application as well as affidavit. In his objection he has stated that the application filed by the plaintiffs is not tenable and same is liable to be dismisses. The plaintiff filed the affidavit along with said application and grounds made out in the said affidavit are all created and concocted false story and on that score also the application is not tenable and same is liable to be dismisses. Further stated that the plaintiffs instituted the suit against the defendants before the Civil Judge, Junior division at Channagiri in OS No.189/2022 and in the said suit this defendant No.1 was appeared and also sought for partition that is the joint family properties in respect of land bearing Sy.No.24 measuring 2 acres 32 gutans of Talikatte Village, Tq:Holalkere and in which this defendant having the legitimate

share and this fact not raised in the present suit, but it was raised in the earlier suit itself and the present application is filed after laps of 4 years from the earlier suit, thereby the present suit is not tenable and same is liable to be dismissed. Under the above stated circumstances the application filed by the plaintiff is not tenable and same is liable to be dismissed. Hence, he prays to dismiss the application.

4. Heard the arguments and perused the material placed on records.

5. The points arise for my consideration is as follows:

“Whether the plaintiffs have made out sufficient grounds to allow the IA No.1(a) filed U/Order VIII Rule 9 of CPC?”

6. My finding to the above point in the “Affirmative” as per final order for the following:

:REASONS:

7. The plaintiffs have filed this suit for the relief of partition, separate possession, declaration and permanent injunction and such other reliefs against the defendants. When the case is posted for framing of issued. In the meantime the counsel for the plaintiffs has come up with this application.

8. As per the well settled principles of law, every opportunity has to be offered to the parties to plead and prove their defence at the trial stage. In this case after service of the summons the defendants have appeared through their counsel and filed their written statement. In their written statement they have specifically pleaded that suit schedule 'b' property is also joint family of the plaintiffs and the defendants and also claim suit schedule item No.6 is only belongs to him and the plaintiffs have no rights and share in the said property. Hence, the plaintiffs permit them to file rejoinder to the written statement of the defendant No.1. Hence, there is a delay in filing the rejoinder, it is not the main ground to curtail the rights of parties. Mere delay in filing written statement/rejoinder cannot suo moto rejected as the right of the parties involved in the present suit. If the plaintiffs is not permitted to file their rejoinder and not allowed to contest the matter, the rights of the plaintiffs will be defeated and resulting multiplicity of proceedings. In order to minimize the litigation, it is fit case to allow the plaintiffs to file their rejoinder.

9. Though there is a delay in filing rejoinder, the same may be compensated by imposing suitable costs. If the plaintiffs is permitted to file their rejoinder no harm or prejudice will be caused to the defendants. Hence, the plaintiffs have made out a grounds to allow the application. According, I

answer point under consideration in the affirmative and I proceed to pass the following:

ORDER

IA No.1(a) filed by the counsel for plaintiffs Under order VIII Rule 9 of C.P.C., is hereby allowed on cost of Rs.300/- and thereby the plaintiffs is permitted to file rejoinder. Accordingly the rejoinder filed by the plaintiffs is taken on record.

Case is posted for framing of issues.

Call on:

Sd/-

**Sr. Civil Judge & J.M.F.C
Channagiri**