

ORDER ON IA NO:2

When the matter was posted for issues, the counsel for the D No. 2 to 6, 10 and 11 came up with present application U/o 6 R 17 R/w. Sec. 151 of CPC seeking permission to amend their W/S by adding Para 12, 12(a) to (g) as detailed in the proposed amendment referred in the application.

1. In the affidavit annexed to the application, the D No.4 stated that, the plaintiffs filed this suit against them seeking the relief of Declaration and Injunction in respect of suit schedule properties. The father of the defendants by name Ginyanaik filed O.S.No.22/2011 for the relief of P and SP in respect of 18 joint family properties before this court. Wherein, present suit schedule property was referred as Item No. 8 schedule property in O.S.No.22/2011. The said suit came to be decreed on 27-11-2014. The D No.1 in this case who is vendor had no absolute right to sell the suit schedule property to the plaintiff through Rg. Sale deed. The defendants wants to include some pleadings in respect of RSA No.717/2021 and 719/2021. RA.No.05/2015 and RA. No.06/2015. The amendment to the

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W/S of defendants in respect of earlier judicial proceedings is necessary and prays to allow the application.

2. Despite giving sufficient opportunity, the plaintiffs not objected the application.

3. Heard. Perused the records. It is noticed that, in order to counter the claim of ownership of the plaintiff over the suit schedule property, the defendants by way of present application wants to get amend their W/S by making necessary pleadings in respect of RSA No.719/2021, OS. 257/2001 (OS.No.22/2011), RA No.05/2015, RA. 06/2015, MA No.12/2019, OS No.239/2018 etc., and other related defenses. Since the plaintiffs not objected the application and the burden is upon the plaintiffs to prove their title over the suit schedule properties as well as possession, this court is of the considered view that, giving permission to the defendant to get amend their W/S by including Para No.12 (a) to (g) as detailed in the proposed amendment is necessary for proper adjudication of the matter. It is needless observe that, the defendants are having burden to prove their

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defenses. In order to adjudicate the matter effectively, giving permission to the defendants to get amend their W/S is necessary in the interest of justice. Accordingly, this point is answered in the *Affirmative*.

4. **PIONT N0:2.** In view of foregoing reasons, I proceed to pass the following,

O R D E R.

I.A N0:2 so filed by D No. 2 to 6, 10 and 11 U/o 6 R 17 R/w. Sec. 151 of CPC is hereby allowed.

The D No. 2 to 6, 10 and 11 are directed to carryout their amendment accordingly and to submit amended W/S.

The IA-3 so filed by the defendants U/o 8 R 1 A of CPC is hereby allowed since the defendants filed some documents relating the pleadings made in support of IA-2.

Call on for amendment of W/S and amended W/S by. 07-06-2024.

Senior Civil Judge & JMFC
Channagiri.