

ORDER ON IA NO:1

When the matter was posted for plaintiffs evidence finally, on 24-06-2023, the plaintiffs came up with present application U/o 6 R 17 R/w. Sec. 151 of CPC seeking amendment of plaint for inserting the Item No. 9 schedule property as referred in the application.

1. In the affidavit annexed to the application, the P No.2 stated that, they filed this suit for the relief of P and SP and Injunction in respect of Pliant A and B schedule properties. The D No. 2 filed W/S along with counter claim in respect of Sy.No.3/5 i.e., proposed Item No. 9 of plaint schedule property. At the time of filing this suit, the plaintiffs not included the Item No.9 proposed properties since, their father one Kodi Kenchappa executed a Rg.Will dt. 31-10-2017 and whereby bequeathed the application schedule property along with other properties in favour of plaintiffs. Since the D 2 maintained counter claim relief in respect of proposed Item No. 9 schedule property, the plaintiff came up with present application and prays to allow the application.

2. Contrary, the D No.1 filed objections denying entire contents of the application stating that, the plaintiffs also filed O.S.No.149/2020 pending before Honble II ACJ and JMFC, Channagiri for the relief of declaration and injunction in respect of proposed Item No.9 plaint schedule property. Since the said suit is pending for consideration, present application is not maintainable. In O.S.No.149/2020, the plaintiffs maintained application U/o 39 R 1 and 2 of CPC which came to be allowed. Against the said order the D No.1 preferred M.A.No.5/2022 before this court which came to be allowed. Against the order passed by this court, the plaintiff preferred appeal before Honble High Court of Karnataka which is pending for consideration. Suppressing those proceedings, the plaintiffs came up with present application and prays to dismiss the application.

3. The Points that arise for consideration are,

1. *Whether the plaintiffs made out sufficient grounds that, the proposed amendment is necessary for effective adjudication of the matter ?*

2. What order :

4. Heard. Perused the records. My answers to the above points are,

POINT NO:1. : In the **Negative**.

POINT NO:2. : As per final order
for the following,

REASONS

5. **POINT NO:1.** Having considered rival contentions of the parties, this court noticed that, present application is maintained by the plaintiffs at the instance of the defense took by D 2 by way of counter claim. Admittedly, D No.2 along with his W/S, also maintained counter claim relief in respect of Item No. 9 proposed property referred in this application. Admittedly, maintaining counter claim relief is enough to consider to for deciding the matter in respect of counter claim relief. This court already framed an Issue No.2 in respect of counter claim relief. Wherefore, this court will consider the proposed Item No. 9 application schedule property in accordance with law while deciding Issue No.2. Wherefore, since, counter claim itself is a suit under law against to the plaintiffs case,

there is not question of considering the application schedule property which already cited as counter claim schedule property and this court already framed Issue No.2 to that effect. Wherefore, for want of necessity under law, the claim of plaintiffs for inserting the proposed Item No. 9 schedule property (counter claim schedule property of D No.2), the application is not maintainable. Accordingly, this point is answered in the *Negative*.

6. POINT NO:2. In view of foregoing reasons, I proceed to pass the following,

ORDER.

I.A N0:1 so filed by plaintiffs U/o 6 R
17 of CPC is hereby rejected.

Call on for P/E by. 11-03-2024.

Senior Civil Judge and JMFC
Channagiri.