

ORDER ON IA No.VII

This I.A. No.VII is filed by plaintiff U/o.6 Rule 17 R/w. Section 151 of CPC seeking amendment of the plaint as prayed in the application.

2. In support of the application plaintiff has sworn affidavit stating that he has filed this suit for declaration and partition and separate possession of his share in the suit properties. The schedule B at serial No.8 and 9 properties which are going to be add in the suit are acquired out of joint family funds from the income of agricultural landed properties belonging to family of plaintiff and defendants. In the said properties the plaintiff is entitled for share. Hence, prayed to implead the said properties as suit property in the suit.

3. The defendant No.11 has filed objection to I.A. No.VII denying the contents of

the affidavit. He has contended that the plaintiff has no right in the said properties. The plaintiff was aware of sale of the said properties before filing this suit. Further contended that these two properties were got exchanged by mother of defendant No.11 and Giriyappa. The VPC No.194/3 property belongs to mother of defendant No.11, hence the plaintiff has no right in the said property. The plaintiff has filed this application only to drag on the matter. This application is barred by law of limitation. The said amendment will change the nature of the suit. Now the case is posted for evidence of plaintiff. At this stage the application filed is not maintainable. Hence, prayed to reject the application with cost.

4. Heard both side.

5. By way of this application the plaintiff is intending to add the suit schedule B properties at serial No.8 and 9. The case is posted for evidence of the plaintiff. Trial has not yet commenced. The plaintiff has to prove his case what he has pleaded in his plaint by producing oral and documentary evidence. The defendants have got right to dis-prove the case of the plaintiff. The plaintiff is seeking to add the joint family properties.

6. At the time of hearing the counsel for defendant submitted before this court that there is exchange deeds taken place between the parties. Instead of exchange deed the sale deed was executed by the parties in order to avoid multiplicity of proceedings. On perusal of the sale deeds, one sale deed executed by mother of defendant No.1, the another sale deed is standing in the name of defendant No.11. Whether this property is joint family property or not needs to be full pledged trial. The proposed amendment will not change the nature of the suit or cause of action and no harm or injury will be caused to the defendants. In order to decide the rights of the parties involved in this case, if this court permits the plaintiff to amend the plaint, no harm will cause to the defendants. Hence, the following

ORDER

The I.A. No.VII filed by the plaintiff U/o.6 Rule 17 of CPC is allowed.

The plaintiff is permitted to amend the plaint as prayed in the application.

The costs shall follow the event.

(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge, Hubballi.

ORDER ON IA No.VII

The plaintiff has filed this I.A. No.VII U/o.1 Rule 10(2) r/w. Section 151 of C.P.C. for impleading proposed defendant No.16 as defendant No.16 in the suit proceedings.

2. In support of the application, the plaintiff has sworn affidavit stating that the plaintiff has sought for amendment of the plaint by inserting suit schedule B properties at serial No.8 and 9 and the proposed defendant is purchaser of serial No.9 property. Hence, he is necessary party in this suit. Hence, the presence of proposed defendant is very much necessary to adjudicate the dispute between the parties. If this application is allowed, no loss or hardship will be caused to the decree holder. Hence, prayed to allow the application.

3. The advocate for proposed defendant No.16 has filed objection contending that the contents of the affidavit are not maintainable either in law or on facts. This defendant has denied all the averments of the affidavit. The plaintiff is responsible to prove the contents of the application. This defendant has admits that the defendant No.11 has executed sale deed in

favour of proposed defendant on 10.09.2015 in respect of VPC No.193/3. The plaintiff has no share in the said property. The said property is not joint family property of plaintiff and defendants. Hence, prayed for rejection of the application.

4. Heard both side.

5. The defendant No.11 has sold the proposed suit schedule B property at serial No.9 to this proposed defendant. The serial No.9 property is part of property No.193/3. The said property was purchased out of joint family funds. The proposed defendant is having rights in the suit property, without making him as party in the proceedings cannot be adjudicated the matter fully and completely. Hence, the presence of proposed defendant is very much necessary to adjudicate the dispute between the parties. If this application is allowed, no loss or hardship will be caused to the defendants. Hence, the following

ORDER

I.A. No.8 filed by the plaintiff U/o.1 Rule 10 of C.P.C. is allowed.

The proposed defendant No.16 is impleaded as defendant No.16 in the suit proceedings.

The plaintiff shall amend the plaint and furnish the amended plaint.

Call on

(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge, Hubballi.