

ORDER ON IA No.IV

The defendants No.1, 5 and 6 have filed this application under order VIII rule 1[A] read with section 151 of Code of Civil Procedure for seeking permission to set aside the order as written statement not filed and to permit the defendant No.1 to file the written statement and to permit the defendants No.5 and 6 to adopt the same as their written statement by recalling the order taking their written statement as not filed in the interest of justice and equity.

On the other hand, the plaintiff's counsel has submitted that no objection to allow the IA No.IV on payment of costs.

Heard the arguments on both sides and perused the materials on record.

On perusal of the IA No.IV, the defendant No.1 has stated that since there was an earlier compromise in between the heirs of Shivappa, the applicants have engaged themselves to trace out the certified copies of the suit number, compromise petition and consequent entries so as to prepare and file the written statement. So also, since they are facing financial constraints and engaged themselves in the busy agriculture activities because of sowing season, they could not timely meet their Advocate and give necessary instruction and fees to as to prepare and file the written statement and however with great difficulty they have filed the written statement. Further, the defendants No.1, 5 and 6 have got a seriously contesting case on merits and thus seeking give one more opportunity to filing the written statement and adopting the memo by allowing the

application as prayed for. On the other side the plaintiff is not filed the objection to the interim application to interim application and her counsel submits to allow the application on payment of costs. In my view, the reasons stated in the accompanying application are believable one. So that the matter in controversy could be disposed off fairly, finally and conclusively on merits and it would avoid further multiplicity of proceedings between the parties by imposing nominal cost and in the interest of justice and equity, I proceed to pass the following;

ORDER

IA No.IV filed by the defendants No.1, 5 and 6 under order VIII Rule 1[A] read with section 151 of Code of Civil Procedure is here by allowed on payment of cost of Rs.200/-.

The defendant No.1 is hereby permitted to file his written statement. The defendants No.5 and 6 are hereby permitted to adopt the written statement of the defendant No.1 as their written statement.

For written statement of the defendants No.1, 5 and 6 by 13-12-2016.

(Balasaheb Wadavade)
CJ & JMFC, Savanur.

It is relevant to note that the plaintiff has not mentioned any reasons in the application or their affidavit regarding the proposed amendment of the plaint. On careful perusal of the contents of the proposed amendment, it appears to the court that the proposed amendment sought by the plaintiff is very much necessary for determination of real question is controversy. In this contest I would like the decision of Hon'ble Supreme Court of India in (2004) 13 SCC 41 Between Kannan V/s Jayalakshmi. Hence, I proceed to pass the following;