

ORDERS ON I.A. FILED U/O 6
RULE 17 OF CPC

This application is filed U/o 6 Rule 17 of CPC by the defendants No.2 and 3 for amendment of written statement.

It is contended in the affidavit annexed that the suit is filed for partition and separate possession by the plaintiff and the plaint was rejected on 29-07-2017 against which the plaintiff preferred an appeal in R.A.No.74/2017 before the IV Addl. Dist & Sessions Judge Kalaburagi. During the pendency of the appeal plaintiff has induced defendant No.1 the father to execute release deed dated 01-09-2017 in her favour in respect of suit schedule properties. Thereby defendant No.1 has relinquished his 1/3rd share in the suit schedule properties in favour of plaintiff. One more document in the form of rectification deed dated 06-02-2018 is executed in her favour by defendant No.1. The 2 documents executed in respect of suit schedule properties which are detrimental to the interest of defendants and same need to be challenged by them by way of proper amendment to the pleadings as there is change of situation subsequent to disposal of the suit and during the pendency of the appeal. If the amendment is not permitted then it will cause serious prejudice and adversely affect the right and interest in the suit properties. Thereby prayed to allow the application.

To this application the plaintiff has filed objection contending that the defendant No.1 executed release deed in favour of the plaintiff by relinquishing 1/3rd share in the suit schedule properties are all denied as false. The case of defendants that these facts may cause detrimental to their interest and the amendment is necessary is denied as false. It is further contended that the son of defendant No.1 by name Sharanappa died in the year 2013 and within a short time defendant No.2 and 3 started ill-treating defendant No.1.

Thereby defendant No.1 left out Koddur village and started to live with plaintiff, plaintiff and her husband who were residing at Kanak Nagar in Chincholli Taluka, due to love and consideration of service rendered by plaintiff and her husband the defendant No.1 has executed release deed on 01-12-217 and there was wrong measurement of extent, one more rectification deed was executed on 06-02-2018. As per the release deed plaintiff is entitled for 1/3rd share of father along with her 1/3rd share. Thereby the amendment sought is not maintainable and application has to be rejected.

Heard arguments. The following point arise for determination:

1. Whether the defendant No.2 and 3 makes out grounds to allow the application filed U/o 6 Rule 17 of CPC?

My finding to the above point is in the affirmative for the following;

REASONS:

POINT NO.1: It is pertinent to note that this application is filed when the matter was posted for cross examination of PW-1. The defendant No.2 and 3 pleaded that defendant No.1 has executed release deed and rectification deed in favour of plaintiff after the plaint was rejected and during the pendency of the appeal. Therefore claims that it is subsequent and detrimental to the interest of defendants as such they want to amend the written statement. On the other hand the plaintiff has admitted that defendant No.1 has executed release deed and rectification deed after the plaint is rejected but has taken contention that it is only due to negligence of defendants No.2 and 3 to look after their father and love and affection shown by plaintiff and her husband these two deeds executed by defendant No.1.

It is pertinent to note that this suit was earlier rejected on the application filed U/o 7 Rule 11 of CPC dated 29-07-217. Thereafter the same was challenged before the IV Addl.

Dist & Sessions Judge sitting at Sedam in R.A.No.74/2017 and the same was allowed and matter was remanded on 18-02-2022 and records were received on 31-05-2022. It is clear from the facts that the alleged release deed and rectification deed are subsequent to the rejection of the plaint and there was no any occasion for the defendants to amend the pleadings until the matter was remanded to this court by order in appeal. Thereby it is clear that defendants had no occasion to amend their written statement immediately after these deeds alleged to have been executed by defendant No.1. It is for the defendants to prove how they are detrimental to their interest and it requires trial. At this stage no doubt evidence has been commenced but this fact is subsequent and defendants would not have sought for amendment earlier. Thereby allowing this application would not cause any hardship on the plaintiff, rather it will help in adjudicating the matter effectively. Thereby in my opinion if defendants are not allowed to amend their written statement, would not get chance to defend effectively as it would be without pleading. Thereby I find grounds to allow this application. Hence I answered the above point in the affirmative and proceed to pass the following:

ORDER

The I.A.No.6 filed U/o 6 Rule 17 of CPC is hereby allowed on cost of Rs.500/-.

The defendant No.2 and 3 are permitted to amend their written statement as sought in the application and shall furnish amended written statement copy.

Call on: 26-06-2023.

Sd/-
Senior Civil Judge &
JMFC Chittapur