

17.9.2024

Orders on IA No.12 U/O VI Rule 17 of CPC

The defendant No.7 has filed this application U/O 6 Rule 17 of CPC and sought to amend the written statement.

2. The defendant No.7 has sworn to an affidavit in support of IA and stated that the plaintiff has filed the suit for the relief of partition and this defendant has filed written statement and took defence that Dyavamma @ Devamma sold land to an extent of 2 acres out of 5 acres 28 guntas in Sy.No.727/3 through unregistered sale deed. The said sale deed was executed on 28.1.1990 for a sale consideration amount of Rs.6,600/- and it was executed on stamp paper of Rs.10/-. This defendant is ready to pay deficit stamp duty but the said contention was not in the written statement. Hence, this application is filed. The proposed amendment will not change the nature of the defence and it will not prejudice the plaintiff. Hence, prays to allow the IA.

3. The plaintiff has filed objections to IA and contended that this suit was posted for plaintiff's evidence on 25.2.2019. The plaintiff has filed affidavit in lieu of her examination in chief on 5.1.2022. Thereafter the defendant filed the las one after another. The proposed amendment is in nature of the counter claim. Therefore the defendant No.7 is required to pay court fee. The proposed amendment will change the nature of the suit. The application is not maintainable. Hence, prays to dismiss the IA.

4. Perused the records. Heard arguments.

5. The plaintiff has filed this suit for the relief of partition and separate possession. The records show that the evidence is commenced. But it has not made considerable head way. Apart from this it is settled law that the application filed by the defendant U/O 6 Rule 17 of CPC stands on a different footing than the application filed by the plaintiff and the application filed by the defendant has to be liberally construed. The proposed amendment will not change either nature of the defence or the cause of action. The burden is on the defendant No.7 to prove the allegations made in the proposed amendment. On perusal of the proposed amendment it appears that in order to avoid multiplicity of suits and to decide the controversy between the parties finally it is just and necessary to allow the amendment. Hence, the following:

ORDER

The application filed by the defendant No.7 U/O VI Rule 17 of CPC is hereby allowed.

The defendant No.7 shall amend the written statement and furnish written statement within 10 days from the date of this order.

For amendment and amended written statement. Call on 21.09.2024.

Senior Civil Judge & JMFC, Sedam.