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KAKL200009182019



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND JMFC
AT BANGARPET**

PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.154/2019

DATED THIS 5TH DAY OF DECEMBER 2024

PLAINTIFF/S : Chinamma and another.,
(Rep. by Sri.**K.V.P.**, Advocate)
-V/S-
DEFENDANT/S: Venkatappa.,
(Rep. by Sri.**K.P.M.**, Advocate)

PARTIES TO I.A.NO.IV

Applicant/
Defendant: Venkatappa.,
-V/S-
Opponent/
Plaintiffs: Chinamma & another.,

ORDER

The defendant has filed the application seeking an order of this court to amend the written statement, in the interest of justice and equity.

PROPOSED AMENDMENT:

In the written statement at page No.4 after sub para e to be insert as sub para (ee). It is submitted that after purchasing the schedule property the katha has been effected in the name of defendant in the year 1996-97 and the RTC standing the name of defendant till 2001-02 as per hand writing RTC extract and the revenue authority have changed up graded the written RTC in to computerized RTC the name has been changed in the name of grandfather of defendant by name Nagappa S/o Muneppa (Na. Muneppa). Till today the RTC standing in the name of defendant and he is in physical possession and enjoyment of the schedule property.

(eee) It is submitted that since the defendant has purchased the property under a valid and legal sale deed dtd.30.05.1994, until and unless a relief for cancellation of said sale deed is sought a mere suit for declaration is not at all sustainable and without physical possession injunction cannot be granted. On this ground also the suit is be dismissed with costs. It is further submitted that since the plaintiff is not in possession of such an imaginary suit schedule property a mere suit for injunction or declaration is not all sustainable without seeking the relief of possession. On this ground alone the suit of the plaintiff is liable to be dismissed.

2. In the affidavit accompanying the application it is stated that, the plaintiff has filed the present suit seeking the relief of declaration and permanent injunction. It is stated that at the time of drafting the written statement no

:3:

instruction regarding to the facts mentioned in the proposed amendment to the counsel. The proposed amendment is just and necessary for just and proper adjudication of the matter in dispute. The proposed amendment does not change the defense of the written statement nor take away any right of the plaintiff, if accrued. If the application is allowed, the plaintiff will not be put to any hardship. Therefore, the defendant prays to allow the application.

3. The plaintiff has filed the objections to the application in hand. In the objections it is stated that the application is neither maintainable in law or on facts. It is stated that the contents of the affidavit are all false. It is contended that the defendant has filed his detailed written statement. The plaintiff got examined as P.W.1 and got documents marked in support of his case. Thereafter, the case was posted for cross examination. When the case was posted for cross examination of P.W.1 the application in hand came to be filed. The application came to be filed at the belated stage. The defendant is seeking amendment of written

:4:

statement instead of proceeding with the case. The defendant has not assigned any cogent ground for allowing the application after commencement of trial. On all these grounds the plaintiff prays to reject the application.

4. I have heard the counsels for plaintiffs and defendant on I.A No.IV and perused the material available on record.

5. The following points arise for determination:-

1. Whether the proposed amendment is necessary to determine the real question in controversy ?
2. What order?

6. After hearing the arguments and on considering the relevant materials on record, my findings on the above points are hereunder:-

Point No.1 : In the **Affirmative.**

Point No.2 : As per final order for the following;

REASONS

7. Point No.1:- The plaintiff has filed the suit seeking the relief of declaration and permanent injunction with

:5:

respect to suit schedule property. The present application came to be filed when the case was posted for cross of P.W.1.

8. The suit is filed in the year 2019. The defendant has filed his written statement and amended written statement on 10.12.2019. This Court has framed issues on 23.12.2020. The plaintiff has adduced his evidence. It is when the case was posted for cross of P.W.1 the application in hand came to be filed.

9. The present application for the amendment of the defendant's written statement seeks to implead certain aspects related to the entries in the RTC extract of the property that the defendant is alleged to have purchased, as well as the issue of the plaintiff not seeking relief with respect to the cancellation of the defendant's sale deed dated 30.05.1994. These aspects are crucial for a comprehensive understanding of the dispute and will contribute to the proper adjudication of the case. The proposed amendment does not alter the fundamental nature of the suit, nor does it change the defense or the facts already pleaded by the defendant. The

:6:

entries in the RTC extract and the absence of the plaintiff's claim regarding the cancellation of the sale deed dated 30.05.1994 are relevant to the case, as they pertain to the ownership and legitimacy of the defendant's title to the property. The inclusion of these details would serve to complete the factual matrix and ensure that all relevant aspects of the dispute are addressed.

10. It is pertinent to note that though there is delay on the part of the defendant to move this application but even as per the precedential guidance of the Supreme Court, an amendment can be permitted, if it is intended to determine the real question in controversy and that all amendments which are necessary for the purpose of determining real questions of controversy between the parties, shall be allowed, if such amendments sought for do not change the basic nature of the suit.

11. The plaintiff will not be put to any hardship, since she will have opportunity to file Additional pleading, if needed and also cross-examine the defendant to that effect. However

:7:

the time and effort of the plaintiff consumed during this process can be compensated by imposing cost. Hence considering foregoing, the application filed by the defendant is to be allowed. Hence, in the light of above discussion the application deserves to be accepted. . ***Hence, I answer point No.1 in the Affirmative.***

12. Point No.2:- In view of the discussion made above, I proceed to pass the following:-

ORDER

I.A.No.IV filed by the defendant under Order 6 Rule 17 R/w. Section 151 of CPC is hereby allowed on cost of Rs.200/-.

The defendant is to carry out the amendment and furnish the amended written statement by next date of hearing.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **5th December 2024.**)*

Sd/-
I Addl., Civil Judge and J.M.F.C.,
Bangarpet.