

ORDERS ON I.A. NO.8

The plaintiffs advocate has filed the above I.A. under Order VI Rule 17 read with Section 151 CPC along with supporting affidavit seeking to amend the plaint as sought below:

“1. To add ' orally' in the 4th page of plaint at line No.18 after word have.

2. To delete the words ' in the year 1986 itself' in the 4th page of plaint at line No.19.

3. To insert the following facts in the 4th page of plaint at line No.23 after word property.

During life time of plaintiffs father namely Govindappa, when he was hale healthy and good state of mind he bequeathed the suit property along with other properties under 'registered will' dated 21.8.1985 in favour of Ramakka, 1st plaintiff Munirathnamma and 2nd plaintiff Munijayamma towards love and affectation. The said Ramakka was passed away on 26.6.1994 issue less”.

2) In the affidavit, the GPA holder of plaintiffs has deposed that plaintiffs have filed the suit for the relief of declaration of title. Now the case is posted for further chief examination of PW1. During life time of the plaintiffs father namely Govindappa when he was hale healthy and in good state of mind, he has bequeathed the registered will on 21.08.1985 in favour of Ramakka, 1st plaintiff Munirathnamma and

2nd plaintiff Munijayamma out of love and affection with respect to bearing Sy.No.126 and other properties, the said Sy.No.126 and other properties, the Sy.No.126 assigned as 126/1, measuring 1 acre 1 guntas, 126/2 measuring 0.24 guntas and Sy.No.126/3 measuring 2 acre 4 guntas, out of 1 acre 34 guntas, the said Ramakka passed away on 26.6.1994 issueless.

3) That at the time of filing the suit the plaintiffs have not properly instructed the counsel they are illiterates and more over they have no legal knowledge. For this reason they had not properly instructed their counsel. While preparing the chief examination of GPA holder of plaintiffs, it is came to his knowledge about the proposed amendment sought in the application. In spite of excising of due diligent, plaintiffs could not able to incorporate the proposed amendment stated in the application. The non stating of facts as sought in the application at early stage is not intentional one and it is beyond control of plaintiffs. If the application is allowed, the cause of action and nature of the suit will not changed and no hardship will be caused to the defendants, otherwise the plaintiffs will be put to great hardship and injury. Hence, the GPA holder of plaintiffs has prayed to allow the application.

4) The defendants 1 to 5 have filed their objections and contended that the application filed by plaintiffs are not at all

maintainable either in law or on facts or possibilities of the case. The plaintiffs have filed this application with an intention to drag on the court proceedings and to harass these defendants. The case was already posted for plaintiffs evidence. The proposed amendment is no away concerned to the plaintiffs, the plaintiffs have not made out any grounds to allow the applications entire allegations made in the affidavit is not a genuine. Hence, have prayed to dismiss the I.A.

5) The defendant Nos. 6 to 9 have filed their objections and contended that the application filed by plaintiffs is vexatious, frivolous and speculative in nature which is not maintainable either in law or on facts. The plaintiffs have filed this application without any basis with malafide and ulterior motive of protracting and dodging the proceedings with dilatory tactics has filed this false application which is not sustainable. In this suit the issues has been framed, evidence has been commenced and it is barred by law of limitation. If the application is allowed the defendants will be put to hardship, irreparable loss, on the other hand no hardship or loss would caused. Hence, the defendants have prayed to reject the application with costs.

6) Heard and perused the material on record.

7) This is a suit filed the plaintiffs for the relief of declaration of title and permanent injunction with respect to

suit schedule property. The plaintiff intends as sought in the above I.A. The GPA holder of plaintiffs in his affidavit has deposed that at the time of filing of the suit the plaintiffs have not properly instructed their counsel, they are illiterates and moreover they have no legal knowledge. Plaintiff contends that said amendment is very much necessary to decide the matter. Now the case is posted for plaintiff's further chief evidence, at this stage the plaintiffs have come with this application to amend the plaint. The said amendment doesn't change the nature of suit. In order to decide the case on merits the plaintiffs have to be given an opportunity to prove their case and delay caused can be met with by imposing costs. The defendants have an opportunity to defend their case. Hence, I proceed to pass the following:

ORDER

The I.A.No.8 filed by the GPA holder of plaintiffs under Order VI Rule 17 read with Section 151 CPC is allowed with costs of Rs.200/- to be paid to the defendants.

The plaintiffs are directed to proceed with the trial without any delay, if not, legal consequences shall follow.

(LATHADEVI G.A.)

Senior Civil Judge, Malur

The plaintiffs are directed to carryout the amendment and to file amended plaint by

Senior Civil Judge, Malur.