

ORDERS ON I.A.No.5

The Counsel for Defendant No.4 and 5 has filed the present I.A No.3 Amendment Application under Order 6 rule 17 r/w Sec.151 of CPC, praying to permit him to amend the Written Statement, by including the Application Schedule Amendment, to the Written Statement.

In the Affidavit appended to the said Application, the Defendant No.4 has sworn stating that, the subsequent to file his Written Statement, he learnt that the Plaintiffs and Defendants have partitioned their joint family properties, before the Prl.C.J and JMFC, Malur, in OS No.119/2019. After it came to his knowledge of the above said fact, he had applied and obtained the certified copies. The Suit Schedule Property in the present Suit is a self acquired property of Defendant No.1 and it is necessary to insert the proposed amendment for deciding the matter and further, safeguarding their interest in the Suit Schedule Property. The proposed amendment will not change the nature of the Suit and it will be helpful in fair disposal of the Suit. If the accompanying Application is allowed, no prejudice will be caused to the Plaintiff. Per contra, if the same is not allowed, irreparable loss and injury will be caused to him. Hence, it is prayed to allow the said Application.

On the other hand, the Plaintiff Counsel has filed objections to the said I.A. contending that the same is not maintainable, either in law or on facts and circumstances and is liable to be dismissed. The Defendant No.4 has sworn to the false Affidavit, the reasons shown in the affidavit all are created story. The Defendant No.4 has not any valid reason to allow the Application. Further, the evidence of the

Plaintiff has been commence after commencement of evidence. The Plaintiffs are having legitimate share in the Suit Schedule Property. The Application filed by the Defendants is only drag on proceedings is not maintainable. Hence, it is prayed to dismiss the Application with costs.

Heard both the Counsels and perused the materials available on record.

It is to be seen that both parties have to be given equal opportunities to put-forth all of their contentions. Further, if the same is not allowed and the Defendants are not permitted to amend the Written Statement, then the Defendants will be put to hassles. Further, if the Defendants are not allowed to amend the Written Statement, then, it will be difficult to answer all the real questions in controversy. Further, if the Amendment is allowed, it will not change the nature and character of the Defence. Further, Issues are not yet been framed in the present matter and it is still in trial stage. Hence, it is imperative to allow the said Application. Further, it is to be seen that both parties should be given equal opportunities to put forth their contentions. The rights of the parties should not be curtailed only because of technical reasons and both the parties should be given equal opportunities. Both are entitled to put-forth their contentions. Further, multiplicity of proceedings and delay in dispensation of justice should be avoided. Hence, this Court feels that an opportunity should be given to the Defendants to put-forth all their contentions. Further, the other side will always have an opportunity to rebut the contention of the Defendants. Hence, for all of the reasons mentioned above, this Court feels that the present Application has merits and deserves to be allowed.

In view of the above discussions and deliberations, this Court proceeds to pass the following;

ORDER

The I.A. No.5 Amendment Application dated 21.10.2024 under Order 6 Rule 17 r/w Sec.151 of CPC, filed by the Defendants is hereby allowed on cost of Rs.200/-

For amendment, call on by 06.01.2025

Sd/-

I Addl. Civil Judge & JMFC,
Malur.