

ORDER ON IA No.9

This application is filed by the plaintiff under Order 6 Rule 17 of CPC to amend the plaint to include averments in the plaint about legality and pattern of marriage of the plaintiff No.2 with deceased Thimmegowda.

2. The plaintiff No.2 sworn to affidavit to the present application and stated that, the present suit is filed for declaration and other reliefs. In the plaint it is averred that she is the legally wedded wife of Thimmegowda and the plaintiff No.1 is his legitimate child. The defendant No.1, 2, 4 to 6 in their written statement have contended that the defendant No.1 alone is the legally wedded wife of Thimmegowda. They have also taken up contention that the plaintiff No.2 is not the legally wedded wife of Thimmegowda. In view of denial of legitimacy of the plaintiff No.1 and legality of marriage between the plaintiff No.2 and deceased Thimmegowda, it is just and necessary to state the pattern of marriage taken place between them. The plaintiffs had filed rejoinder with

permission application to deny the contention of the defendant. But this court rejected the application by holding that there is no provision to file subsequent pleadings. In view of written statement of the defendants, it is just and necessary to plead about the pattern of marriage and its legality. The proposed amendment will not change the cause of action. It will alter the nature of the suit. Therefore, the present application is filed to amend the plaint.

3. The defendants No.1, 2, 4 to 6, 7(c) to (d) have objected the present application by filing statement of objections and contended that the plaintiff No.2 sworn to false affidavit. The allegations made in the affidavit that she is the legally wedded wife of the deceased Thimmegowda is false and baseless. The defendant No.1 is the only legally wedded wife of Thimmegowda. The plaintiff No.2 is not the legally wedded wife of Thimmegowda. The plaintiffs have not specifically pleaded in their plaint as to legality of marriage of plaintiff No.2 and the legitimacy of the plaintiff No.1. Therefore, it is prayed to reject the present application.

4. Heard and perused.

5. The point that arises for my consideration is as follows ;

Whether the plaintiff has made out sufficient grounds to permit them to amend the plaint as sought for at this stage?

6. My answer to the above point is in the ***Affirmative*** for the following ;

REASONS

7. The present suit is filed in the year 2022 for relief of declaration and permanent injunction. The defendants No.1, 2, 4 to 6 have filed their written statement on 29.11.2022 itself. Thereafter, issues have been framed by this court on 22.08.2023. The case was set down for plaintiff evidence. At that time, the plaintiffs have filed IA No.8 to permit them to file rejoinder. The same was rejected by this court through its order dated 20.03.2025. As the trial of case is already began, as per the provisions of order 6 rule 17 of CPC the plaintiffs shall establish that in spite of their due diligence the matter intended to be raised through proposed amendment could not be raised earlier. The plaintiffs intend to amend their plaint to plead about the pattern and legality of the marriage of plaintiff No.2 with the deceased Thimmegowda. It is their contention that since the defendants No.1, 2, 4 to 6 have denied the marriage of the plaintiff No.2 with deceased Thimmegowda and they pleaded that defendant No.1 is his only wife, the occasion to plead about legality of marriage arose. The proposed amendment will not change the nature of suit. Therefore, it is just and necessary to permit the plaintiffs to amend the plaint as sought for. Accordingly, the above point is answered in the

“Affirmative”. Hence, this court proceeds to pass the following:

ORDER

IA No.9 filed under Order 6
Rule 17 of CPC is hereby
allowed.

The plaintiff is permitted to
amend the plaint as sought for.

For amendment and for
amended plaint

**I-Addl. Senior Civil Judge & JMFC.,
Maddur.**