

KAMD510008692018



Presented on : 10-10-2018
Registered on : 23-10-2018
Decided on : --
Duration :

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
NAGAMANGALA**

Dated this 3rd day of March-2022

Present

Sri. Devaraddy B.A., LL.M.
Addl. Civil Judge & JMFC.,
Nagamangala.

Original Suit No.244/2018

Plaintiffs : Smt. Siddamma & Another.

V/s.

Defendants : Lakshamma and others.

IA No.III

Applicant/

Defendant No.2 : Boraiah and others.

(By Sri. M.D Advocate)

V/s

Opponent/

Plaintiff : Lakshamma & Another.

(Sri. T.K.R.G. Advocate)

* * *

ORDERS ON I.A. No.III

The defendant No.1 has filed IA No.III U/O 6 Rule 17 R/W/S 151 of CPC, for seeking permission to amend the written statement by adding proposed amendment as sought in the application.

2. The said application filed by accompanying affidavit and stated that, the plaintiff has filed the suit against him and other defendants for the relief of partition and separate possession with respect to the suit schedule properties. At the time of the filing the suit, due to oversight and typographical mistake the proposed amendment was not inserted in the written statement. The said proposed amendment is essential to prove their contention and the reasons which are stated in the affidavit are bonafide but not intentional one. For which it is just and necessary to amend the written statement. Further stated that proposed amendment is very essential to adjudicate the matter, if the proposed amendment is allowed will not change cause of action and nature of suit. If the application not allowed then he will be put great hardship and injustice. Hence, prays to allow the application.

3. The counsel for plaintiffs have filed objection on IA No III by denying contents of the present application and further submits that there are no bonafide grounds in their application and affidavit, this application filed with an intention to harass the plaintiffs and drag the case and also to get wrongful order from this court.

4. Further submits that this application filed after the filing written statement though the defendants have knowledge proposed amendment prior to filing the written statement. The proposed amendment will change the nature of the case and introduce new case. If the application is allowed then the plaintiffs will be put great hardship and injustice. If the application is not allowed then no harm will be caused other side. The present application filed after laps of three years and it is barred by limitation. Hence prays to dismiss the application with costs.

5. Heard hearing on IA No III. Perused records.

6. Based on the contents of the present application and materials available on record, the following points arise for consideration;

1. *Whether IA No III filed by the applicant/defendant No.2 U/o 6 Rule 17 R/W/S 151 of CPC is deserved to be allowed ?*

2. *What order?*

7. Perused pleadings and materials available on record, the aforementioned points answered as under :

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

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

REASONS

Point No.1 :

8. The plaintiffs have filed the suit for the relief of partition and separate possession in respect of the suit schedule properties. The present application filed for seeking permission to amend the written statement by adding the proposed amendment as para number.2 “ ಪ್ರತಿವಾದಿ 2 ರಿಂದಿ 4 ಮತ್ತು ಕ್ರಮವಾಗಿ ಅವರ ತಾಯಿ ಅಜ್ಜರವರಾದ ಬೊಮ್ಮಮ್ಮ ಕೋಂ ತಿಮ್ಮಯ್ಯರವರು ಮೂಲತಃ ನಾಗಮಂಗಲ ತಾಲ್ಲೂಕು, ದೇವಲಪುರ ಹೋಬಳಿ, ಬೋರಿಕೊಪ್ಪಲು ಗ್ರಾಮಕ್ಕೆ ಸೇರಿದವರಾಗಿದ್ದು, ಸದರಿಯವರು ಬೆಸ್ತರು ಜನಾಂಗಕ್ಕೆ ಸೇರಿದವರಾಗಿದ್ದು, ಅವರ ಮೂಲ ಕಸುಬು ಮೀನು ಹಿಡಿಯುವುದು ಮತ್ತು ಸುಣ್ಣ ಸುಡುವುದು ಆಗಿರುತ್ತದೆ. ಅದರಂತೆ ಬೊಮ್ಮಮ್ಮ ಕೋಂ

ತಿಮ್ಮಯ್ಯನವರ ಜೊತೆ ಪ್ರತಿವಾದಿ 2 ರಿಂದ 4ರವರು ಯಾವುದೇ ಒಂದು ಕಡೆ ನೆಲೆ ನಿಲ್ಲದೇ ಅಲೆಮಾರಿ ಜೀವನ ನಡೆಸಿಕೊಂಡು ಬಂದು ಕೊನೆಗೆ ಸುಮಾರು 50 ವರ್ಷಗಳ ಹಿಂದೆ ನಾಗಮಂಗಲ ತಾಲ್ಲೂಕು, ದೇವಲಪುರ ಹೋಬಳಿ, ಹೆಚ್. ಎನ್. ಕಾವಲ್ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.103ರಲ್ಲಿ 3 ಎಕರೆ 1 ಗುಂಟೆ ಜಮೀನಿನಲ್ಲಿ ಅನಧೀಕೃತವಾಗಿ ಸಾಗುವಳಿ ಮಾಡಿಕೊಂಡು ಬಂದು ಅಲ್ಲಿಯೇ ಒಂದು ಗುಡಿಸಲು ಕಟ್ಟಿಕೊಂಡು ವಾಸಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ. ಅದರಂತೆ 1 ನೇ ವಾದಿಯ ಗಂಡ ಚಿಕ್ಕಂದಿನಲ್ಲಿಯೇ ಹಲ್ಲಿ ಗೆರೆ ಮಾಳೆಯ ಸಣ್ಣಪ್ಪನವರ ಮನೆಗೆ ದತ್ತು ಹೋಗಿ ಅಲ್ಲಿಯೇ ವಾಸಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ ಹಾಗೂ 1 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡನು ಸಹಾ ಚಿಕ್ಕಂದಿನಲ್ಲಿಯೇ ಬೆಂಗಳೂರಿಗೆ ಹೋಗಿ ಬನಶಂಕರಿಯ, ಬನಶಂಕರಳಮ್ಮಳ ದೇವಾಸ್ಥಾನದ ಹತ್ತಿರ ನೆಲಸಿರುತ್ತಾರೆ. ಹೀಗೆ ಬೊಮ್ಮಯ್ಯ 3 ಜನ ಗಂಡು ಮಕ್ಕಳು ಯಾವತ್ತು ಸಹಾ ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿ ವಾಸವಾಗಿರುವುದಿಲ್ಲ ಹಾಗೂ 1 ನೇ ದಾವಾ ಸ್ವತ್ತನ್ನು ಸಂಪಾದಿಸಲು ಹಾಗೂ ಅಭಿವೃದ್ಧಿಪಡಿಸಲು ಯಾವುದೇ ಧನ ಸಹಾಯವನ್ನು ಬೊಮ್ಮಯ್ಯನ 3 ಜನ ಗಂಡು ಮಕ್ಕಳು ಮಾಡಿರುವುದಿಲ್ಲ ".

9. The Learned counsel for defendant No.2 to 4 submits that, the proposed amendment is very essential to adjudicate the matter finally. If the proposed amendment is allowed will not change the nature of suit and cause of action. If the applicant is not allowed then the defendants will be put great hardship and injustice. Hence, prays to allow the application.

10. The learned counsel for plaintiffs submits that this application filed with an intention drag on proceedings and

without producing materials with regard to proposed amendment. If the application is allowed then the nature of the suit will be changed and introduce the new case. If the application allowed then the plaintiffs will be put great hardship and injustice.

11. On perusal of contents of written statement, affidavit of the present application it is crystal clear that, the proposed amendment is very essential for adjudication of the subject matter in controversy between the parties finally and it further reveals that, the said proposed amendment will not change the nature of the suit and cause of action. If the application is allowed no injustice will be caused other side. On other hand, if the application is not allowed then the defendants will be caused injustice and irreparable injury. Admittedly the present application filed by the defendant No.2 when this case posted for plaintiff evidence. Hence it is just and necessary to impose reasonable costs on the said application.

12. By going through above discussion and grounds, this court has come to conclusion that the proposed amendment is required to avoid the multiplicity proceedings of the case and

decide the matter finally. For which, the present application filed by the applicant/defendant No.2 is deserved to be allowed. Hence, point no.1 is answered in the **affirmative**

Point No.2 :

13. For the reasons discussed above, proceed to pass the following;

ORDER

IA No.III filed by the applicant/defendant No.2 U/O VI Rule 17 R/W/S 151 of CPC, is hereby allowed with costs of Rs. 300/-.

Further defendants permits to amend the written statement as sought in the said application.

*[Dictated to the stenographer directly on computer, typed by her corrected and then pronounced by me in the open court on this day of **3rd day of March,2022**]*

(Devaraddy)

Addl. Civil Judge & JMFC.,
Nagamangala.