

20 / 02 / 2020

Plaintiff by - SKS
D1 to D5, D3(a) to (d) - PTP
D6 to D8 and D10 - Exparte
Defendant No.9 by - NKM
Defendant No.11 by - OSB
Defendant No.12 & 13 by - TRL

for Orders on I.A.No.19

Orders on IA.No.19

The plaintiff filed I.A.No.19 U/o 6 Rule 17 R/w section 151 of C.P.C. and prays to permit the PA holder of plaintiff to carry out the proposed amendment.

2. The application is also support by an affidavit sworn to by the PA holder of plaintiff.

3. On the contrary the learned advocate for defendant No.1 to 5 and 11 filed their separate objections and prays to dismiss the application.

4. Heard, perused the materials placed on record.

5. The following points arise for my consideration:

- 1) Whether the I.A.No.19 filed by the plaintiff U/o 6 Rule 17 R/w Section 151 of C.P.C. is deserves to be allowed ?
- 2) What order ?

6. My answers to the above points are as follows:

Point No.1 : In the negative.

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

REASONS

7. **Point No.1** :- The plaintiff wants to amend his plaint as under;

After Para No.12(e) of the plaint following to be incorporated as;

12(f) The defendant No.2, 4, 5 and 6 aware of the fact that the suit properties are the joint family properties in joint possession of plaintiff have fabricated Gift Deeds, Sale Deeds and a Vibhagapatra in respect of suit Item No.1, 2 and 6 of A schedule properties and Item No.1 & 6 of B schedule property behind the back of the plaintiff to take away the rights of the plaintiff over the property, through there was no such legal necessities in the family and the sale is not for the benefit of the family. The defendant No.2 and 6 aware of the facts that the suit Item No.1 of A schedule property bearing No.3758 is the joint family have created a Gift Deed dated 29.12.2008 in respect of the property behind the back of the plaintiff, to take away the rights of the plaintiff over the property. The plaintiff is not a party to the Gift Deed and the subsequent Sale Deeds dated 03.07.2009 in favour defendant No.8 and Sale Deed dated 07.12.2009 in favour defendant No.14 Smt. Mamatha, those documents do not bind the rights of the

plaintiff over the suit property. The defendant No.2 and 5 aware of the facts that the suit Item No.2 of A schedule residential property bearing NO.2231 is a joint family property have created a Gift Deed dated 29.12.2008 in respect of the said property behind the back of the plaintiff, to take away the rights of the plaintiff over the suit property. The plaintiff is not a party to the Gift Deed and the Gift Deed does not binding on the rights of the plaintiff over the suit property. The defendant No.2 and 5 are of the facts that the suit item No.6 of A schedule residential property bearing NO.945/b is a joint family property have crated a Gift Deed dated 29.12.2008 in respect of the property behind the back of the plaintiff, to take away th rights of the plaintiff over the property. The defendant No.5 in turn has crated a Sale Deed dated 13.07.2009 in favour of defendant No.11 Srikantaprasad. The plaintiff is also not a party to those documents and hence the Gift Deed and the Sale Deed do not binding on the rights of the plaintiff over the suit property. The defendant No.2 and 5 are of the facts that the suit Item No.1 of B schedule residential property bearing No.2232 is a joint family property have created a Gift Deed dated 29.12.2008in respect of the property behind the back of the plaintiff, to take away the rights of the plaintiff over the suit property. The plaintiff is not a party to the said Gift Deed, the said Gift Deed do not binding on the rights of the plaintiff over the suit property. The defendant No.2 and 5 aware of the facts that the suit Item No.6 of B schedule

residential property bearing No.3488 have crated a Gift Deed dated 29.12.2008 in respect of the said property behind the back of the plaintiff, to take away the right of the plaintiff over the property. The plaintiff is not a party to the said Gift Deed, the said Gift Deed do not binding on the rights of the plaintiff over the suit property.

(g) The defendants No.2 and 5 aware of the fact that the suit Item No.3 of A schedule residential property bearing No.3221 is the joint family property in joint possession of plaintiff have fabricated Sale Deed dated 05.04.2007 in respect of property, behind the back of the plaintiff, to take away the right of the plaintiff over the property. The plaintiff is not a party to the Sale Deed and the Sale Deed and the subsequent Sale Deed dated 18.06.2007 in favour of defendant No.9 Prabhakara in respect of the said property do not binding on the rights of the plaintiff over the suit property.

(h) The defendants No.2, 3 and 5 aware of the fact that the Item No.4 of the suit A schedule residential property bearing No.3222 is the joint family property in joint possession of plaintiff, have fabricated Sale Deed dated 19.04.2008 in respect of property, behind the back of the plaintiff, to take away the right of the plaintiff over the property. The plaintiff is not a party to the document and the Sale Deed and the subsequent Sale Deed dated 16.01.2009 in favour of defendant No.10 Smt. Kalyani in respect of the said property do not binding on

the rights of the plaintiff over the property. The sale is not for the benefit of the family.

(i) The defendants No.4 and 3(a) & (b) Savithramma and Chandra aware of the fact that the suit Item No.2 of B schedule residential property bearing No.2234 is the joint family property in joint possession of plaintiff has fabricated Vibhaga Patra dated 24.10.2011 in respect of the property behind the back of the plaintiff, to take away the share right of the plaintiff over the property. The plaintiff is not a party to the said document and the Vighaga Patra dated 24.10.2011 does not binding on right of the plaintiff over the suit property.

II. Proposed amendment in the prayer column schedule to the plaint : In between the words "Properties" and the word "and" The following sentence to be incorporated.

The Gift Deeds dated 29.12.2008 in respect property No.3758, Gift Deed dated 29.12.2008 in respect property NO.2231, Gift Deed dated 29.12.2008 in respect property No.945/b, Gift Deed dated 29.12.2008 in respect property No.2232, Gift Deed dated 29.12.2008 in respect property No.3488, Sale Deed dated 05.04.2007 in respect property No.3221 and subsequent Sale Deed, Sale Deed dated 19.04.2008 in respect property No.3222 and subsequent Sale Deed, Vibhagapatra dated 24.10.2011 in respect

property No.2234 do not binding rights of the plaintiff over the property.

8. The learned advocate for plaintiff contended that he has filed the present suit for partition and separate possession of suit schedule properties. The plaintiff is uneducated and illiterate women who is suffering from ill-health she could not get the exact status of properties on the date of filing the suit. The defendant No.1 who is the senior member of the family managing the affairs of the joint family and hence the plaintiff could not instruct the facts in detail to her counsel regarding the status of suit schedule properties at the time of filing the suit. While going to prepare for evidence it is noticed that the pleadings are incomplete. Now the plaintiff is able to secure the details and documents pertaining to suit properties. Hence the proposed amendment is very much necessary.

9. The learned advocate for plaintiff also produced and relied on the following decisions.

AIR 2004 KAR 2571

AIR 2006 SC 1647

10. On the other hand the defendant No.1 to 5 contended that the application is not maintainable either under law or on facts. The plaintiff had filed similar application i.e., I.A.No.16 seeking to incorporate additional para No.12(a) to 12(e) mentioning and narrating the same set of pleadings as mentioned in

I.A.No.19 in different sentences. It is evident that on plain reading of proposed para No.12(i) and earlier proposed amendment Para 12(e) are one the same. Similarly the narration given in I.A.No.19 about the Sale Deed and Partition Deed are already mentioned in earlier amendment application in para 12(a) to 12(e). Further, I.A.No.16 which is the earlier amendment application came to be allowed on 11.12.2018. Thereafter the plaintiff did not chose to amend the plaint and also not filed amended plaint. When such being the case and when the matter is said down for cross-examination of PW.1 the plaintiff with an intention to protract the matter filed the present application. The facts and contention taken by the plaintiff are all known to plaintiff while filing the suit itself. Hence, m prays to dismiss the application.

11. The learned advocate for defendant No.11 contended that the application filed by the plaintiff is not maintainable either in law or on facts. The present application has been filed by the plaintiff after commencement of trial. The plaintiff is trying to seek declaratory relief in 2019 in respect of deed executing in the year 2008. The same is barred by limitation. Hence prays to dismiss the application.

12. It is pertinent to note that now the case is posted for cross-examination of PW.1. As per Order 6 Rule 17 of C.P.C. no amendment shall be allowed after commencement of trial unless with due diligence the

party could not put forth the proposed pleading earlier. But, it is not the contention of plaintiff that the facts narrated in the proposed amendment were not within her knowledge before commencement of trial or at the time of filing the plaint. The suit is basically for the year 2010, as such no reasonable grounds made out by the plaintiff to allow the application. As such I answer Point No.1 in the negative.

13. Point No.2 :- In view of my findings of point No.1 in the negative, I proceed to pass the following:

ORDER

The I.A.No.19 filed by the plaintiff U/o 6 Rule 17 R/w section of C.P.C. is hereby dismissed with cost of Rs.250/-.

For tendering PW.1 for cross-examination by 05.03.2020.

**Sd/-
JUDGE,
Addl. Court of Small Causes,
MYSURU.**