

O.S.22/2020

ORDER ON I.A. DATED 29.03.2023

The defendant No.4 has filed the application under Order VI Rule 17 C.P.C., when the case was posted for further chief-examination of P.W.1, seeking amendment of the written statement.

2. Plaintiff No.3 has filed statement of objections.

3. Heard.

4. The suit is for the relief of partition and separate possession of suit schedule properties. Defendant No.4 wishes to amend the written statement stating that the written statement requires to be amended under the changed circumstances because at the time of filing the written statement R.F.A.1158/2006 preferred by the 1st defendant and his father was pending before the Hon'ble High Court. The Hon'ble High Court in the said appeal has confirmed the judgment passed in O.S.60/2000 by this court that there is already a partition. As such, the decree of the superior court is

binding on all the parties to the suit unless modified or set aside. Therefore, the defendants wish to amend the written statement.

5. According to the plaintiff No.3 the proposed amendment is not maintainable and the judgment passed in R.F.A.No.1158/2006 is not binding on the plaintiffs as they are not parties to the appeal.

6. At this juncture, the court has to consider whether the proposed amendment is required for deciding the case effectively. The court cannot go into the merits of the proposed amendment i.e., the court at this juncture need not consider whether the judgment passed in R.F.A.1158/2006 is binding on the plaintiffs or not.

7. In this case the defendant No.3 wishes to delete paragraph No.5 of the written statement as according to the said defendant the proposed amendment covers the issue raised in paragraph No.5. The proposed amendment is that the Hon'ble High Court has confirmed the judgment of this court passed in O.S.No.20/2000. However, the plaintiffs in spite of the said judgment have filed the suit for partition once again. Therefore, they are not entitled for the relief before this court.

8. The proposed amendment clarifies the case of defendants. In addition to this the proposed amendment is necessary for determining the real question in controversy between the parties. Apart from that the proposed amendment will not take away a legal right if any accrued in favour of the plaintiffs. Therefore, the following:

ORDER

I.A. dated 29.03.2023 filed under Order VI Rule 17 of C.P.C. by the defendant No.4 is allowed.

Defendant No.4 is permitted to carry out amendment. For amendment of written statement and to furnish amended written statement by 01.09.2023.

Senior Civil Judge, Nanjangud.
21.08.2023