

## **ORDERS ON IA-10**

The defendants have filed this application U/o 6 Rule 17 of CPC seeking permission to amend their written statement by way of adding paragraph No-7(A), 7(B) & 7(C), after paragraph No.7. wherein they wanted to plead certain relevant facts which were already in their written statement, but they were not happily worded and now they wants to elaborate the earlier pleas with regard to adverse possession and Order II Rule 2 of CPC.

2. In support of it, the defendant No-1 has filed his affidavit on his behalf and on behalf of defendant No.2 stating that proposed amendment is very much necessary to decide the case between the parties. Hence he prayed to allow the application.

3. To oppose the same, the plaintiffs have filed their objection stating that the application is not maintainable either in law or on facts, once the defendants taken the contention of adverse possession they cannot deny the ownership of plaintiffs which they are now proposed to amend, therefore, they cannot travel behind their pleadings as such, they prayed to reject the application.

4. Heard both sides, perused the material available on record.

5. Now, the points that would arise for the consideration of this court are as follows:-

1) Whether the defendants have made out ground to allow the IA No-10?

2) What order?

6. My findings to the above points are as under:

Point No-1: In the affirmative

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

### **REASONS**

**7. Point No-1:** The advocate for the defendants argued that the defendants intending to plead some more facts in their written statement by way of adding paragraph No-7(A) to (C) after paragraph No.7. The said facts are not been elaborately pleaded by the defendants due to over sight and in advertence, but pleading of these facts are very much necessary to decide the case effectively and finally. Therefore, if the proposed amendment is allowed, no harm or prejudice would be caused to plaintiffs. Moreover, the nature of the defence will not change if the application is allowed. Hence he contended that amendment is very much necessary.

**8.** Per contra, the advocate for the plaintiffs vehemently argued that the defendants are intending to amend novice pleadings which are not permissible. They are also denying the title of the plaintiffs on one breath and at another breath set up adverse possession against the plaintiffs which is also contradictory. The present amendment sought is vague in nature which is not at all permissible under law. Hence, absolutely, no grounds made out to allow the application.

**9.** Having heard the arguments from both sides, admittedly the present application came to be filed when the case was posted for defendants evidence. According to the defendants, they have only introducing relevant facts elaborately in their written statement by way of amendment and which are formal one and as they were not happily worded earlier, therefore, if the amendment sought for by the

defendants is allowed, definitely, it will not change the nature of the suit.

**10.** At this juncture, it is pertinent to mention the decision of the Hon'ble Apex Court in **Ramesh Kumar Agarwal V/s Rajamala Export Private Ltd., & others 2012 S.C.C.R 425**, wherein, it is held that generally amendment applications are to be allowed. Therefore, I am of the considered opinion that in order to resolve real controversy between the parties and to arrive at just decision in the suit, it is necessary to permit the defendants to amend their written statement as prayed for.

**11.** So far as the contention of the plaintiffs is concerned that, the defendants are pleading contrary to their own earlier pleadings, to this it is needless to say that the defendants can take inconsistent pleas. If the proposed amendment is allowed, there is no harm or prejudice would be caused to the plaintiffs. On the other hand, the plaintiffs will also get an opportunity to file their counter by way of filing rejoinder to the amended portion of the written statement. Since the defendants have filed the present application after the closure of the evidence of plaintiffs, therefore, they have filed this application at belated stage, for that it is necessary to impose certain costs on the defendants which will meet the ends of justice. Hence I am of the considered opinion that the defendants have made out grounds to allow the application. Hence I answer point No-1 in the affirmative.

**12. Point No-2:** For the foregoing reasons, I proceed to pass the following:

## **ORDER**

I.A. No-10 filed by the defendants No-1 & 2 is hereby allowed subject to payment of cost of Rs.500/- payable to the plaintiffs.

Payment of cost is condition precedent.

Consequently, the defendants No-1 & 2 shall amend and furnish amended written statement on or before 17-02-2018.

Addl. Senior Civil Judge Raichur.