

ORDER ON I.A No.5

The counsel for the Plaintiff has filed this application seeking permission to amend the plaint so as to plead about the gift deed dated 19.08.2009 and to insert the additional prayer with regard to the said gift deed.

2. In the affidavit sworn in support of this application, the GPA holder of the Plaintiff has sworn that, the Plaintiff has filed this suit against the Defendants seeking the relief of Partition and separate possession of her 1/3rd share over the suit schedule property and for other consequential relief.

3. That in the written statement, the Defendants have taken up the contention that, the father of the Plaintiff and the Defendants No.1 and 2 namely K.Siddaiah has executed a registered gift deed dated 19.08.2009 in favour of Defendants No.2 in respect of item No.1 of the suit schedule property. The Defendant No.2 in order to deprive the rights of the Plaintiff over the suit schedule item No.1 property played fraud and obtained the alleged gift deed from the father of the

Plaintiff and the Defendant No.1 and himself behind their back, which is illegal and not binding on the share of the Plaintiffs. Therefore, the proposed amendment does not alter or change the nature of the suit. By allowing this application, no loss or hardship is going to be caused to the other side. On the other hand, by rejecting the same she will be put to loss and hardship. Accordingly, it is prayed to allow the application.

4. Per contra, despite given opportunities, the counsel for the Defendants have not filed objections to the present application.

5. Heard the counsel for the Plaintiff on the I.A and perused the materials on record.

6. The following points would arise for the consideration of this court:-

- i) Whether the I.A filed by the Plaintiff seeking amendment to the plaint deserves to be allowed?
- ii) If so, what order?

7. My answers to the above Points are as under:-

Point No.1 : In the Affirmative;

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

REASONS

8. Point No.1:- Admittedly, the Plaintiff has filed this suit against the Defendants seeking the relief of partition and separate possession.

9. The record reveals that, already based upon the rival pleadings of the parties issues are framed by this court and the matter is posted for evidence on Plaintiff side and at this stage the present application is filed seeking amendment to the plaint to add the additional relief of declaration regarding the gift deed dated 19.08.2009 and also to plea about the said gift deed in the plaint. No doubt, nothing prevented the Plaintiff from pleading about the alleged gift deed while filing the suit. However, there is no reason assigned by the Plaintiff in the affidavit annexed to the present application as to why the said facts could not be pleaded earlier. However, it is a well settled principle of law that, in a suit for partition the Plaintiff is not required to seek the relief of declaration that a particular deed is not binding upon her. It is sufficient for the Plaintiff to seek the relief of her legitimate share in the suit schedule property. However, considering the fact that the Trial of the case has not yet commenced, if the present application is allowed no loss or hardship is going to be caused to the Defendants and on the contrary, if the same is rejected the Plaintiff will be put to loss and hardship. Accordingly, this Point is answered in the Affirmative.

10. Point No.2:- In view of my answer to Point No.1, I proceed to pass the following:-

ORDER

I.A No.5 filed by the Plaintiff under Order VI Rule 17 R/w. Sec.151 of the CPC., is hereby allowed.

The counsel for the Plaintiff is directed to carry out amendment to the plaint as sought for and file amended plaint.

19-04-2023. Prl. Senior Civil Judge & CJM.,
Ramanagara.