

Orders on IA filed under VI Rule 17 R/w
Section 151 of CPC.,

The applicants/defendants filed the present application to permit them to amend the written statement as detailed in the application.

2. In the affidavit accompanying the application the applicant/defendant No.3 stated that, the suit is for the relief of declaration and other consequential relief in respect of the suit schedule property filed by the person claiming to be the legally wedded wife of Chikka Hombaiah. The opponent/plaintiff and her daughter filed OS No.62/2005 on the file of Addl Civil Judge and JFMC., Ramanagara against the applicants and her mother for the relief of partition of the suit schedule properties. The said suit was decreed exparte.

That the applicants came to know of disposal of OS.No.62/2005 when they received notice from the Court in FDP.No.10/2007. Thereafter, the applicants preferred Mis Case No.10/2009 and the petition was allowed and OS.No.62/2005 was restored and the applicants filed the written statement. Thereafter, the plaintiffs therein preferred impleading application and thereafter IA Under Order XXIII Rule 1 R/w Section 151 of CPC., seeking permission of the Court to withdraw the suit and to file a fresh suit on the same cause of action. The said application was allowed.

That the opponent and her daughter 6 months after withdrawal of the suit made hectic efforts to get the

revenue entries transferred to their names in respect of the suit schedule properties in OS.No.62/2005. Thereafter, the opponent and her daughter filed OS.No.124/2016 and in the said suit a compromise petition was filed to defraud the rights of the applicants. The said compromise petition was accepted by the Court.

That the applicant and her daughter moved Memo before the Court to get the final decree registered. But, for want of 11(E) sketch the decree was registered on 04-11-2017. The decree passed in OS.No.124/2016 dated:12-08-2017 is not binding on the applicants. Being aggrieved by the fraudulent decree, the applicant preferred OS.No.7/2018 for cancellation of decree dated:12-08-2017 passed in OS.No.124/2016. The defendants in the said suit after their appearance before the Court filed written statement and the case is posted for evidence after framing issues.

That the present defendant No.3 is the plaintiff No.5 and the power of attorney holder of other plaintiffs in OS.No.7/2018. Due to his ill-health, he could not attend the Court and the said suit was dismissed for non-prosecution. Thereafter, the present applicants preferred Mis Petition No.14/2020 which is pending for adjudication.

That the opponent has filed the present suit in respect of property bearing Sy.No.18/16. The opponent in this suit examined herself as Pw-1 and deposed that she has paid property tax to the concerned Panchayath. But, the

applicants on enquiry came to know that, the opponent has not paid property tax. But, she had got entries in the revenue records by submitting a request letter to the Village Panchayath Office with regard to OS.No.13/2012 and OS.No.74/2012.

That the applicants have obtained certified copies of the proceedings of the said two suits. OS.No.74/2002 was dismissed vide judgment dated:04-09-2004 and the opponent has not preferred any appeal challenging the said judgment and decree. That the daughter of the opponent has filed OS.No.13/2002. One of the properties in both of the suits is one and the same, which is also subject matter of this suit.

That this Court is legally bound by the judgment dated:04-09-2004 pronounced in OS.No.74/2002, as such the present suit is barred by the Principles of Res-judicata. That the amendment sought for is due to the events that occurred subsequent to the filling of the written statement and in order to seek appropriate relief in respect of the events that have occurred subsequent to filing of written statement, the application is preferred. The amendment is necessary for proper adjudication of the suit. Therefore, the application.

3. The opponent/plaintiff filed detailed statement of objections through her counsel. According to the opponent, her husband did not care of her daughter and herself as such she filed petition claiming maintenance. Against the orders passed in the petition Chikka

Hombaiah preferred Criminal Revision Petition, which was dismissed by the Hon'ble Sessions Court. Thereafter, in lieu of maintenance landed property belonged to Chikkanna @ Chikka Hombaiah was allotted to the opponent through a Panchayath Parikath.

That OS.No.62/2005 was preferred in respect of the ancestral properties of the husband of the opponent. The said suit was decreed. But, it was restored as per the orders passed in Mis Petition No.10/2009. Since, there were certain defects in OS.No.62/2005 the plaintiffs in the said suit withdrew the said suit.

That the land bearing Sy.No.18/2016 is the self acquired property of husband of the opponent. Land to an extent of 1 acre in the said survey number was allotted to the opponent through a Panchayath Parikath and she is in possession of the said property. That the applicants are not the LR's of Chikka Hombaiah. Since, the applicants have not proved that they are the LR's of Chikka Hombaiah, they have filed the present application to protract the proceedings. Hence, the opponent prayed for dismissal of the application with costs.

4. Heard.

5. The suit is for the relief of declaration of title of plaintiff over the suit schedule property and for permanent injunction. The defendants on 02-09-2016 filed the written statement. At present, further amendment is sought for in the written statement by way of inclusion of

one paragraph in respect of proceedings in earlier OS.No.74/2002 on the file of Prl.Civil Judge and JMFC., Ramanagara. The proposed amendment will not take away admission if any made by the defendants in the written statement. Apart from that, if the amendment is allowed the burden is upon the defendants to prove the defence taken by way of proposed amendment. Moreover, the plaintiff will not suffer hardship by allowing the amendment. Therefore, the following:

ORDER

IA filed by the applicant/defendant No.3 under Order VI Rule 17 of CPC., is allowed.

The defendants are permitted to carry out the amendment to the written statement.

For amendment of written statement and to furnish the amended written statement.

**Addl. Senior Civil Judge & JMFC.,
Ramanagara.**