

Order on IA No.IV

The counsel for the Defendant No.6 has filed this application seeking to permit to him amend the written statement so as to include para No.4 after the para No.3 in the written statement as proposed in the application.

2. In the affidavit sworn in support of the present application, 6th Defendant has sworn that he is the bonafide purchaser of the suit schedule property after the value of the property is increased, the Defendants No.2 to 5 and the Plaintiff intentionally by taking innocence have hatched the conspiracy to have wrongful gain and filed this suit without disclosing the reality and also with including the other proprieties.

3. At that time of filing his written statement he was unable to find out the properties belonging to the Plaintiff family and now with great difficulty he tried to find out other family property which are not included in the suit. That recently he obtained the khatha copy of the house property belonging to the Plaintiffs family. Therefor, he has been advanced to appeal properly regarding the non inclusion of the other joint family properties. Therefore, by by allowing

this application it would not change his defence. Therefore, he has prayed to allow the application.

4. Per contra, the Plaintiff has filed objections to the present application by opposing to allow the same mainly on the ground that delay and that the trial of the case as already commenced. Hence, it is prayed to dismiss the application with exemplary costs.

5. Heard arguments of the learned counsel for Plaintiff and the Defendant No.6 on the present application and perused materials on record.

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

- i) Whether the IA.4 filed by the Defendant No.6 deserves to be allowed?
- ii) If so, what order?

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

POINT No.(i) : In the Affirmative;

POINT No.(ii) : As per the final order
for the following:-

REASONS

8. Point No.(i):- Admittedly, the Plaintiff has filed this

suit against the Defendants seeking the relief of partition and separate possession and for consequential relief of declaration that the sale deed dated:14-06-2013 executed by the Defendant No.4 and his family members in his favour pertaining to the suit schedule property is not binding on him.

9. The record reveals that the Defendant No.6 has appeared and filed his written statement. Though, the Defendant No.6 has denied the entire plaint averments, he has put-forth his defence on the ground that he is bonafide purchaser of the suit schedule property. On the basis of the rival pleadings of the parties this Court has framed the following issues. On the based upon the said issues the Plaintiff has already led his chief evidence by examined as P.W.1, the Defendant No.6 has come-up with the present application.

10. By way of proposed amendment the Defendant No.6 intends to plead that the suit is bad for partial partition in view of the non inclusion of other joint family properties. In this regard he intends to amend his written statement.

11. It is well settled position of law that allowing amendment to the pleadings must be a general rule and it's

rejection on exception. No doubt the amendment should not be allowed once the trial of the case has not yet commence. But considering the fact that proposed amendment are in the nature of the defence of the Defendant No.6, by allowing the present application no loss or hardship is going to be caused to the Plaintiff and on the other hand it would help this Court to decide the matter in issue between the parties completely and effectively. Accordingly, this Point is answered in the Affirmative.

12. Point No.(ii):- In view of my answer to Point No.1, I proceed to pass the following:-

ORDER

I.A.No.4 filed on behalf of the Defendant No.6 under Order VI Rule 17 R/w Section 151 of CPC is hereby allowed.

The Defendant No.6 is permitted to amend the written statement by inserting the proposed amendment as sought for.

For carryout amendment to the written statement and file amended written statement.

Call on : 04-11-2022.

Prl. Senior Civil Judge & CJM,
Ramanagara.