

Orders on IA dated:12-03-2019

The applicant/plaintiff filed the application under Order VI Rule 17 of C.P.C., to permit him to amend the plaint as detailed in the application.

2. The plaintiff No.1 has sworn to an affidavit annexed to the application and submitted that, the suit has been instituted for partition and separate possession of the suit schedule properties. At the time of institution of the suit, due to oversight and also due to non-availability of documents certain properties have not been included in the suit. That the plaintiff No.1 has never relinquished his right over the suit schedule properties in favour of Chikkanna. That the suit schedule properties are the ancestral properties and illegally khatha was made-out in the name of wife of 3rd defendant. Hence, the application.

3. The opponents/defendants filed detailed statement of objections through their counsel. According to the opponents, the applicants are not concerned with Chikkanna. That the properties exclusively belong to Chikkanna, who is the father of the 3rd defendant. The applicants have no manner of right over the suit schedule properties. The application schedule properties belong to Chikkanna. Therefore, the present application is not maintainable. That the partition has already taken place. Hence, the present application is filed to drag on the proceedings. That the proposed amendment will change nature and character of the suit. Therefore, the opponents prayed for dismissal of the application with costs.

4. Heard.

5. The plaintiffs have instituted the suit for partition and separate possession and also for declaration that, gift deed dated:10-10-2014 is not binding on the plaintiffs. After framing of issues, the plaintiffs filed the present application for inclusion of 2 properties and also one paragraph in the plaint in respect of the properties sought for inclusion in the suit. The proposed amendment will not change nature of the suit and also cause of action will not be changed. According to the applicant, the said properties are the ancestral properties, though the contention of the opponents is that, the properties sought for inclusion in the suit are the properties of Late.Chikkanna.

Whether the properties are ancestral properties of the applicants or self acquired properties of Chikkanna has to be decided at Trial. Therefore, without inclusion of the properties, the said aspects cannot be decided. Therefore, when the proposed amendment will not change nature of the suit, as stated above, the opponents will not suffer hardship. Therefore, for proper adjudication of the suit the application deserves to be allowed. However, costs has to be imposed since the application is filed when the case was posted for evidence of the plaintiffs. Therefore, the following:

ORDER

IA filed under Order VI Rule17 CPC., by the applicants/plaintiffs is allowed.

The plaintiffs are permitted to carry out amendment.

For amendment of plaint and to furnish amendment plaint.

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