

**ORDER ON I.A's under Sec. 151 of CPC, Order XVIII Rule 17 of CPC and Order VI Rule 17 of CPC**

The Plaintiffs have filed these applications seeking to reopen the case and recall D.W.1 for his further cross-examination and seeking permission to amend the plaint by inserting the proposed amendments in the plaint.

2. In the affidavit sworn in support of the application filed to I.A under Order XVIII Rule 17 of CPC, it is sworn by the 1<sup>st</sup> Plaintiff that, they have filed this suit for the relief of Partition and Separate Possession and other consequential reliefs. Though her counsel has partly cross-examined D.W.1 during the COVID 19 pandemic period, the latter has not been fully cross-examined. In the meanwhile, the further cross-examination of D.W.1 has been taken as Nil. Hence, the further cross-examination of D.W.1 is not intentional, but for a bonafide reason. Hence, it is prayed to allow the application.

3. Per contra, the counsel for the Defendants has filed objections to the present application by opposing to allow the same on the ground that already D.W.1 is cross-examined fully. In spite of it the present applications are filed only with a view to drag on the proceedings. Hence, it is prayed to dismiss the applications with costs.

4. The counsel for the Plaintiffs also filed I.A. under Order VI Rule 17 R/w. Sec. 151 of the CPC with a prayer to permit them to amend the plaint as prayed for.

5. In the accompanying affidavit filed to the said application, it is contended by the 1<sup>st</sup> Plaintiff that on 8-4-2021, their uncles have filed the detailed written statement and taken the contention that there was no such division taken place between the members of the family and that their father late Bhadrappa. That their father and the Defendant No.2 fraudulently obtained the Release Deed in their favour.

6. That during the pendency of the suit, their father late Bhadrappa died on 16-01-2015 and during his life time, he never executed any of the deeds or documents of his share in the suit schedule properties. That the 2<sup>nd</sup> Defendant is enjoying all the suit schedule properties without giving any shares to them. Hence, the proposed amendments are very much required. Accordingly it is prayed to allow the application.

7. Heard both the sides and perused the materials on record.

8. The following points would arise for my consideration:-

- i) Whether the applications filed by the Plaintiffs deserve to be allowed?
- ii) If so, what order?

9. 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

10. **POINT No.1:** Admittedly the Plaintiffs have filed this suit against the Defendants for Partition and Separate Possession and to declare that the sale deed dated 13-11-2009 and Release Deed dated 13-11-2009 are null and void and not binding on their share.

11. The order sheet reveals that D.W.1 is cross-examined by the counsel for the Plaintiffs. However she submits that though she had submitted before this court that she intends to further cross-examine D.W.1, the stage is closed. This is one of the oldest matters pending on the file of this court. Therefore this court is bound to dispose off this matter on priority basis. At the same time, the parties must be given an opportunity to lead their respective evidence so as to establish their respective claims. Otherwise it may not be possible to

decide the suit on merits. Hence, if the present application seeking recall of D.W.1 by imposing reasonable cost, it would meet the ends of justice.

12. As far as the application seeking amendment of the plaint is concerned, the Plaintiff has alleged about the Release deed right from the beginning. Now by way of proposed amendment she intends to add the prayer with regard to the death of her father during the pendency of the suit as well as with regard to the share of herself and the other Plaintiffs in the share of their father and the signatures having been allegedly obtained fraudulently by their father and their uncle i.e., Defendant No.2. Hence, from the amendment sought to be introduced, it appears that the Plaintiffs intend to bring on record the subsequent events which have transpired during the pendency of the suit. It is not that the Plaintiffs are seeking to plead about the alleged Release Deed for the first time now. Therefore the proposed amendment would not change the nature of the relief/s sought originally or the rights of the parties. It would also not put the Defendants to surprise. On the other hand, the rejection of the proposed amendment may cause loss to the Plaintiffs. Therefore, at this stage, it is considered just and proper to allow the present application. Accordingly, the following:

**ORDER**

I.A filed by the Plaintiffs under Sec. 151 of CPC and I.A. under Order XVIII Rule 17 of CPC are hereby allowed on payment of cost of Rs. 500/- and I.A under Order VI Rule 17 of CPC filed by the Plaintiffs is hereby allowed.

D.W.1 is recalled for his further cross-examination.

The Plaintiffs are permitted to amend the plaint by inserting the proposed amendments as sought for and file amended plaint by: 8-8-2022.

**Prl. Senior Civil Judge & CJM.,  
Ramanagara.**