

OS. No. 144-2014 (Order on IA No. 9)

The defendant Nos. 2, 5 to 7 have filed this application under Order 6 Rule 17 CPC seeking for amendment of written statement to add para No. 13.

In the accompanying affidavit, the defendant No. 12 has submitted that the plaintiffs have filed the suit for partition and separate possession. He further submit that after he had filed this written statement, the legal heirs of the Thimmaiah agreed that they have executed a Registered Sale deed dated 29.04.2015 in his favor. But due to typographical mistake, it was mentioned that possession was delivered on 29.04.2015 instead of 28.05.1999. During the lifetime of Thimmaiah itself, he had handed over the Hakkupatra. The amendment is necessary and if not allowed, he will be put loss and hardship and hence prays for allowing the application.

The plaintiff has filed objection and has stated that the defendant No. 12 has not supported his contention in the application with any documents. The amendment sought for changes the entire written statement filed previously. Hence has prayed for dismissing the application.

Heard both sides and perused the materials on record.

The defendant No. 12 has filed this application seeking for amendment of the written statement by including a para. On perusal of the written statement filed by the defendant Nos. 12 to 14 dated 26.09.2011, it can be seen that at para No. 10, it is mentioned that during the life time of Thimmaiah he executed a GPA and affidavit (agreement) in favor of defendant Nos. 12 and received amount of Rs. 21,000/- from defendant No. 12 and delivered possession of the item No. 1 of the suit schedule property.

Now by way of this amendment, the defendant No. 12 is seeking clarification regarding the Sale deed dated 29.04.2015 executed by the legal heirs of Thimmaiah in his favor. He has stated that though he was put in possession of the property sold to him by Thimmaiah in the year 25.08.1999 itself, due to typographical error in the Sale deed dated 29.04.2015, it was mentioned as 29.04.2015.

The stage of the case is for the evidence of defendant Nos. 12 to 14. If the defendant No. 12 is permitted to amend the written statement, the plaintiff can cross examine the defendant No. 12 on the said point. The amendment sought for being only a technical error and as the defendant No. 12 in his written statement dated 26.09.2011 had at para No. 10 stated that he was put in possession of the property purchased by him from Thimmaiah, it can be seen that it does not change the character of the written statement filed on 26.09.2011.

Hence on considering the above facts the IA No. 16 filed deserves to be allowed. But considering the delay caused, the IA No. 16 is allowed at cost of Rs. 500/-

**Senior Civil Judge and JMFC
Magadi**