

ORDERS ON I.A.NO. VI

This application is filed on behalf of the plaintiff under order 6 rule 17 r/w section 151 of CPC to permit the plaintiff to amend the plaint prayer 'B' and to delete the sentence " hence the same is null and void to that extent."

The plaintiff has filed an affidavit in support of the application stating that in the plaint prayer, while drafting the plaint, in prayer 'B' it was prayed that the alleged sale deed executed by the defendant No.1 to 3 in favour of defendant No.4 is not binding to her to the extent of her ½ share. However instead of closing the prayer there itself, a further sentence as " and the same is null and void to that extent" was added. In fact the said additional prayer is not required in view of the earlier prayer. There was repetition of the prayer. Hence prays to allow the application.

The counsel for the defendant No.4 filed objection stating that this court has already held that the predecessor of the plaintiff was not at all in actual possession right from the date of the sale deed executed in his favour in RA No. 29/1988 and 30/1088. On date of alleged sale admittedly it is proved beyond any reasonable doubt that the plaintiff in OS 70/99, on the file of then Munsiff Court, Karwar are in actual possession and occupation of the suit property asserting their right, who are not parties to the alleged sale transaction and obtained the

permanent injunction against the plaintiff. Thus an ingenious brain is used making attempt to avoid the court fees by using tactics will not cure the basic facts and no court can assist the persons, who try to avoid court fee by playing tactic and mischief. Hence prays to reject the I.A.

Now the point that arise for determination is "whether the proposed amendment could be permitted"?

Heard arguments on both sides.

The answer to the aforesaid point is in the 'affirmative', for the following:

REASONS

The plaintiff is only asking to delete some words in the prayer. The question whether the plaintiff is liable to pay court fees and on what basis the court fees has to be paid are to be decided on the basis of the pleadings and documents. The evidence is not yet commenced in this case. The amendment will not change the nature or basic structure of the suit. Even issues are not framed. If at all the defendants have any objections regarding payment of court fees, the same could be raised in the additional written statement and proper issues could be framed. For the aforesaid reasons, the aforesaid point is answered in the affirmative and for the following order is passed.

ORDER

I.A.No. VI filed by the plaintiff Under Order
6 ru13 17 R/w Section 151 CPC., is allowed.

For amendment and amended the plaint.

Call on: 29.02.2016.

(Mohamed Ashraf Aris)
Pri. Sr. Civil Judge, Karwar.