

29/01/2024

Pltf. By SBB
D1a(1 to 5) D1(c),(d)
D1(f)(1,2) - SRL
D3 -NSRB
D6, D7, D9 – SVA
D2 – Dead
D4, D8- Exparte
For Orders

ORDER

The plaintiffs filed the suit for the relief of partition and declaration against the Defendants.

2. The Plaintiffs stated that the suit schedule property was belonging to Siddyali Mohammed Bin Hussain Kadli and his brother Siddyali Mohiddin Bin Hussain Kadli. They died leaving behind Plaintiffs and Defendant No.1(a) to 1(f). The suit schedule property has been situated far away from the residence of the Plaintiffs and the same is left uncultivated for many years. The Defendant No.2 to 8 are not concerned with the family of the Plaintiffs and Defendant No.1(a) to 1(f). The Defendant No.2 to D5 have created fake and fraudulently created a GPA. The Plaintiffs further submitted that Siddyali Mohammed Bin Hussain Kadli died on 31.01.1975 and Siddyali Mohiddin Bin Hussain Kadli died on 16.06.1977. The Defendant No.2 to 5 created a false, fake and bogus GPA in the name of death person and sold the said properties and caused damage to the Plaintiffs. Thereby the Plaintiffs filed this

suit praying before this court to pass an order of Declaration and Partition against the Defendants.

3. The suit summons was served upon the Defendants and the Defendant No.6, 7 and 9 appeared before this Court and filed written statement. They have denied the plaint averment and they submit that they are the bonafied purchasers and hence they prayed to dismiss the suit.

4. The Defendant No.5 filed this application praying before this Court to permit them to amend the written statement as under by adding Para No.7 ಅ:

7(ಅ) ವಾದಿಯರು ವ 1 ನೇ ಪ್ರತಿವಾದಿಯ ವಾರಿಸಾದರರು ದಾವಾ ಆಸ್ತಿಯಲ್ಲಿ ಯಾವತ್ತೂ ಕಬ್ಬಾ ವೈವಾಟಿ, ಸಾಗುವಳಿ ಮಾಡಿದ್ದೇ ಇರುವುದಿಲ್ಲ. ಆ ಕಾರಣ ಅವರುಗಳು ಸಾಮಾಯಿಕ ಕಬ್ಬಾ ವೈವಾಟಿಯಲ್ಲಿ ಇದ್ದಾರೆ ಎನ್ನುವ ಪ್ರಶ್ನೆಯೇ ಉದ್ಭವವಾಗುವುದಿಲ್ಲ. 5 ನೇ ಪ್ರತಿವಾದಿಯು ದಾವಾ ಆಸ್ತಿಯನ್ನು ಖರೀದಿ ಮಾಡಿದಂದಿನಿಂದ ಕಬ್ಬಾ ವೈವಾಟಿ ಮಾಡುತ್ತಾ ಬಂದಿರುವುದರಿಂದ ಆತನ ವಿರುದ್ಧ ಪ್ರತಿಬಂಧಕಾಜ್ಜಿ ಆದೇಶ ಕೋರಲು ವಾದಿಯರಿಗೆ ಯಾವುದೇ ರೀತಿಯ ಹಕ್ಕು ಇರುವುದಿಲ್ಲ. ಅದೇ ರೀತಿ ಈ ವಾದಿಯರು ಈ ದಾವಾ ವಸ್ತುಸ್ಥಿತಿಗೆ ಮತ್ತು ವಿವಾದಗಳಿಗೆ ಸಂಬಂಧಿಸಿ ಈ ಪ್ರತಿವಾದಿ ಹಾಗೂ ಉಳಿದ ಪ್ರತಿವಾದಿಯರ ವಿರುದ್ಧ ಭಟ್ಟಳ ಪೋಲಿಸ್ ಠಾಣೆಯಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಫಿಯಾರ್ಡನ್ನ ನೀಡಿರುವಲ್ಲಿ ಈ ಪ್ರತಿವಾದಿ ಸದ್ರಿ ಖರೀದಿ ವ್ಯವಹಾರಗಳ ಕುರಿತು ಎಲ್ಲಾ ದಾಖಲೆಗಳನ್ನು ತನಿಖೆಗಾಗಿ ಹಾಜರಪಡಿಸಿರುವಲ್ಲಿ ಭಟ್ಟಳ ಪೋಲಿಸ್ ಠಾಣೆಯ ಪೋಲಿಸರು ಸದ್ರಿ ಪ್ರಕರಣಗಳನ್ನು ಕೂಲಂಕುಶವಾಗಿ ತನಿಖೆ ಮಾಡಿ ಸದ್ರಿ ದಾಖಲೆಗಳು ಕಾನೂನು ಬದ್ಧವಾಗಿರುತ್ತದೆಂತಹ ಪರಿಗಣಿಸಿ ಈ ಪ್ರತಿವಾದಿಯ ವ ಇತರರ ವಿರುದ್ಧ ಬಿ ರಿಪೋರ್ಟ ಅನ್ನು ಸಲ್ಲಿಸಿ ಸದ್ರಿ ಪ್ರಕರಣದಿಂದ ಅವರುಗಳನ್ನು ಮುಕ್ತಗೊಳಿಸಿದ್ದು ಇರುತ್ತದೆ. ಆ ಕಾರಣ ಈ ಪ್ರಕರಣದಲ್ಲಿಯ ವಾದಿಯ ಎಲ್ಲಾ ಹೇಳಿಕೆಗಳು ಸುಳ್ಳಾಗಿರುತ್ತದೆ ಮತ್ತು ಆಧಾರ ರಹಿತವಾಗಿರುತ್ತದೆ.

5. The Learned counsel for the Defendant No.5 submitted that the amendment is necessary and he relied upon 2 citations as under :

1. AIR 2007 SC 1663 A & B

(REF. PARAS 18, 19, 14, 24 & 25)

2. 2023(3) KCCR 2485

The Learned Counsel for the Plaintiffs argued and submitted that the amendments are not necessary in order to decide this suit and they produced two documents.

6. On perusal of the materials placed on record the present stage of the suit is for cross examination of the Plaintiffs witness. The cross examination of the Plaintiffs witness was initially closed and upon the application filed by the Defendant No.5 the stage was reopened and the witnesses were recalled.

7. The Learned Counsel for the Plaintiff submitted that as per the provisions of the order 6 Rule 17 the Defendant No.5 has not made out valid grounds to allow the application and also has not shown the due diligence in filing this application. The Learned Counsel for the Defendant No.5 relied upon 2 citations and submitted that when the amendment of written statement does not substitute any defense of that would take up a inconsistent plea, the amendment to the written statement can be allowed and the Court should be liberal in allowing the application pertaining to amendment of the written statement.

8. On perusal of the materials and the amendment sought by the Defendant No.5, I am of the opinion that the amendment sought by the Defendant No.5 would not take away the defense of the defendants nor damage the cause of action of the suit. Hence, I am of the opinion that allowing this application would not hamper the pleadings of the Plaintiff. In order to suffice the circumstances with respect to the delay in filing the same can be compensated by imposing cost upon the Defendant No.5.

Thereby I proceed to pass following :

ORDER

Application filed by the Defendant No.5 is hereby allowed at cost of Rs.200/-.

The cost of Rs.200/- shall be paid to the Plaintiffs.

Sd/-

Addl. Civil Judge and
J.M.F.C. Bhatkal.