

ORDERS ON I A No VI

Defendant no 1 filed I A No VI under S. 151 of CPC seeking to issue direction to the plaintiff to include the property mentioned in the application in the suit. In the application, it is stated that plaintiff filed the suit for partition and separate possession and the property mentioned in the application is also the ancestral property belonging to the family which is not included in the suit by the plaintiff. The said aspect has not been stated in the written statement due to oversight and written statement filed by defendant no 1 belatedly, has been rejected by the court. The property mentioned in the application is also ancestral property and the same needs to be included in order to adjudicate the matter effectively for which plaintiff needs to be directed to include the said property. Based on the said grounds, defendant no 1 sought for issue of direction to plaintiff to include the property in the suit.

Counsel for plaintiff filed objections to the application wherein it is stated that the application filed by defendant no 1 is not tenable one. Further, it is stated that the property as stated in the application is not the ancestral property. In the records also the name of Narayan Bhat has not been mentioned in the relevant column of ownership and the name has been entered only as a possessor of the property. The property belongs to the temple and the family possessed the same to carry out the pooja activities of temple. Defendant no 1 is also aware of the said aspect and in spite of the same, filed the present application. The property as mentioned in the application is not the ancestral property of the family and has not been possessed as family property. Based on the said grounds, plaintiff sought for rejection of the application.

Heard counsel for defendant no 1 and plaintiff. Perused the materials on record.

It is the contention of defendant no 1 that the property as described in the application, is also the ancestral property which aspect is denied by plaintiff. The suit of the plaintiff is for the relief of partition and separate possession and all the properties belonging to the family needs to be included in the suit. In the mean-time, it is the prerogative of the plaintiff to make the claim with respect to the properties. The plaintiff is at liberty to abandon a particular claim. The plaintiff is also at liberty to institute the suit with respect to the properties over which he intends to claim right. Neither the court nor defendants can direct the plaintiff to sue for a particular property or direct to include the property in the suit and such direction can be given only under certain circumstances when the facts of the case demands. At best, defendant can raise plea with respect to the said aspect in his written statement. Except raising the plea regarding the aspect in the written statement, defendant cannot compel the plaintiff to include the property in the suit over which plaintiff does not intend to claim any right.

It is the plaintiff who can decide about the claim to be made and also about the properties over which he intends to claim. The plaintiff not included the property as mentioned in the application for the reasons known to him. It is open to the defendant to raise appropriate contention regarding the said aspect. Except raising appropriate contention, defendant no 1 cannot compel the plaintiff to include the property over which the plaintiff does not intend to seek any claim. The plaintiff contended that the property as described in the application is not the ancestral property belonging to the family but the said contention cannot be considered or adjudicated at this juncture. The nature of the property cannot be ascertained or adjudicated at this juncture. Though inherent power is vested with the court under S. 151 of CPC, the same cannot be exercised in order to compel the party to do a particular act against his will. The plaintiff appears to

be not intending to claim any relief with respect to the property mentioned in the application and it does not appear to be appropriate to compel him to include the property at the instance of defendant no 1 by exercising inherent power. Unless the facts and circumstances of the case demand, the plaintiff cannot be compelled to include the property. The application filed by defendant no 1 is devoid of merits. On consideration of the materials on record, this court deems it appropriate to pass the following

ORDER

I A No VI filed by defendant no 1 under S. 151 of CPC is hereby rejected.

Sd/-

C/c Addl. Civil Judge, Kumta.