

ORDERS ON APPLICATION

The plaintiffs filed an application under Order VI Rule 17 R/w Section 151 of CPC and prays the Court to permit the plaintiffs to carry out amendment in the plaint.

The amendment sought to be made by the plaintiffs is as follows:

Amendment sought to be made.

a). After Para III 4 add 4 (a) as follows; 10(a) That the defendant in their written statement contended that Koosappa Acharya has executed Gift Deed dated 04-11-2011 as per Doc. No. 6897/2011-12 of SRO, Udupi. But father of the plaintiff Koosappa Acharya died on 18-04-2011 and hence at any cost he cannot execute the alleged Gift Deed dated 04-11-2011 which alleged to be executed nearly seven months after his death. Hence the said Gift Deed is executed by means of misrepresentation, fraud, forgery, impersonation in order to cheat the plaintiffs from getting their legitimate share in the plaint schedule property. Under no circumstances dead person can execute the Gift Deed as alleged. Hence the Gift Deed dated 04-11-2011 is a fraudulent document which do not confer any

right over the plaint schedule property in respect of the share of the father of the plaintiffs and the plaintiffs are entitled to ignore the said document. The act of the Narayana Acharya is an offence under Indian Penal Code. After obtaining the certified copy of the alleged Gift deed dated 04-11-2011 on 10-11-2023 the plaintiffs came to know that the defendant no. 10 is also signed as witness and is part of the crime. The plaintiffs reserve their right to file criminal case against the defendant no. 10 and others who are part of the crime in execution of fraudulent Gift Deed dated 04-11- 2011. The Plaintiffs hereby denies the truth, validity of the Gift Deed dated 04-11-2011 and hereby claiming the consequential relief to cancel the Gift Deed dated 04-11-2011.

b). In Para V, relief column after para a) add aa) the following. aa) Consequently to declare that the Gift Deed dated 04-11-2011 bearing Doc. No. 06897/2011-12 is null and void and not binding on the

2. The first plaintiff by name Smt. Rathna sworn to an affidavit wherein she has stated that she has filed a suit for partition claiming 1/3rd share in the suit schedule property. The defendant no.7 and 10 filed their written statement

contending that her father has executed a gift deed dated 04.11.2011. Her father died on 18.04.2011 and there is no possibility for his father to execute the gift deed dated 04.11.2011. Hence, the alleged gift deed is a rank fabricated, got executed by way of misrepresentation fraud and impersonation. She could not filed the amended application earlier as she was not aware of the said document. Accordingly, pray for allow the application.

3. The defendant no.10 filed objections wherein he has stated that the application is false, frivolous, vexatious and not maintainable. The plaintiffs have created a forged death certificate of Koosappa Acharya. The age mentioned in the plaint is also wrong. This defendant and his father have performed the Shradha of Koosappa Acharya and his wife. The deceased Koosappa Acharya himself executed Gift deed on 04.11.2011. The alleged death certificate got prepared by the plaintiffs. Among other grounds prays the Court to dismiss the application.

4. Heard arguments.

5. The point that would arise for my consideration are;

1. *Whether the plaintiffs have made out grounds to cause amendment to the plaint by allowing the application filed by them Under Order VI Rule 17 of CPC?*

2. *What order?*

6. My answer to the above points are as under:

Point no.1 : In the Affirmative

*Point no.2 : As per final order
for the following:*

REASONS

7. Point no.1:- The plaintiffs filed the suit for partition and separate possession. The defendants appeared before the Court and filed written statement. The evidence is not yet commenced by the plaintiffs. As per Order VI Rule 17 of CPC., the parties to the suit can amend the plaint at any stage, but before commencement of trial and they should not take away the admission if any made by them in the pleadings. On plain reading of the provision of Order VI Rule 17 of CPC., the parties to the suit can amend their pleadings at any time before the commencement of the trial and they should satisfy the Court that in spite of due diligence they could not amend the plaint earlier. The plaintiffs filed the application after filing of the written

statement and as such they were not aware about the Gift deed as alleged in the written statement. Hence, they could not file the instant application. Whether the deceased Koosappa Acharya executed a Gift deed in favour of defendant or not and whether he died on 18.04.2011 or not will be ascertained at the time of judgment. In order to adjudicate the matter and to ascertain the truth and do to the complete justice in one suit and also to avoid the multiplicity of the proceedings it is just and necessary to allow the application. Hence, I answered point no.1 in the affirmative. Accordingly, I proceed to pass the following:

ORDER

The I.A. filed by the plaintiffs under Order VI Rule 17 of CPC., is hereby allowed.

In the result, the plaintiffs are permitted to carry out amendment in the plaint as prayed in the application.

Prl. Sr. Civil Judge and CJM., Udupi.

