

23-11-2020

COMMON ORDER ON I. A.
NO.XI to XIII

The learned counsel for defendant No.1 has filed I.A.No.XI under Order VI Rule 17 and Section 151 of C.P.C., seeking permission to carry out proposed amendment in the written statement, I.A.No.XII under Order VIII Rule 1A and Section 151 of C.P.C., seeking permission to produce the documents by condoning the delay and I.A.No.XIII under Section 151 of C.P.C., to give direction to the office to keep

the schedule documents in the safe custody in the ends of justice and equity.

Opposing the said applications learned counsel for plaintiffs has filed common objection statement.

Heard the learned respective counsels .

The following points arise for consideration.

1) Whether the proposed amendment is necessary to determine the real question in controversy between the parties?

2) Whether I.A.No.XII and XIII filed by defendant No.1 deserves to be allowed?

My findings on the above points are

Point no.1 – in the affirmative,

Point No.2 – In the affirmative,

for the following:-

REASONS

Point No.1:- The plaintiffs have filed this suit for partition claiming their legitimate share in the suit schedule properties. The defendant No.1 by filing written statement has denied the

facts pleaded by the plaintiffs stating that the suit schedule properties are not partible properties and he has taken the contention of Will dated 08-05-1984 executed by his mother Smt. Padmavathi while she was in sound and disposing state of mind in his favour .

On perusal of the materials placed on record , even though defendant no 1 and 7 have filed their written statement but till this date issues have not been framed. Even defendants have not produced any documents in support of their contention. It is at this stage, defendant No.1 has come up with all these applications. By way of amendment the defendant No.1 intends to plead with regard to the Will dated 29-03-1952 allegedly executed by his father , so also intends to take the contention of oral partition entered between himself and his brother Late Shridhara Pandi.

The plaintiffs by filing objection statement have categorically submitted that if defendant No.1 is permitted to carry out proposed amendment in the written statement, it would amount to introducing totally a new case which is in contradiction to the contention

already taken by him and that if the proposed amendment is allowed, the valuable right accrued to the plaintiffs will be taken away. Hence submitted to reject the application.

Now at this juncture it would be relevant to refer here the observation made by the Hon'ble Apex Court in (2009) 14 S.CC. 38 Sushil Kumar Jain Vs. Manoj Kumar and another, wherein it was held that

“The amendment of the written statement by adding new ground of defense or substituting or altering the defense is different from substituting new cause of action. Therefore, it should be liberally interpreted. The court should be more liberal in permitting the amendment of written statement than amendment of the plaint. The provision of Order VI Rule 17 has no application when issues are not framed, documents are not filed and where trial has not yet commenced.”

Further in AIR 2007 Supreme Court 1663 Usha Balashaheb Swami and others Vs. Kiran

Appaso Swami and others, wherein it was held that

“An amendment of the plaint and amendment of the written statement stand on different footings, courts are more liberal in allowing amendment to the written statement even to include inconsistent pleas.”

As observed earlier when issues yet not been framed and trial is not yet commenced, considering the observations made in the aforesaid rulings it can be said without hesitation that defendant No.1 can very well take new contention in the written statement which is inconsistent to the earlier pleadings. If defendant No.1 is permitted to carry out proposed amendment and accordingly if he files amended written statement, plaintiffs have every opportunity to file rejoinder to the amended written statement. Hence this court is of the opinion that defendant No.1 has made out ground to allow the application and the proposed amendment is necessary to determine the real question in

controversy between the parties. Accordingly Point No.1 is answered in the affirmative.

Point No.2:- So far as I.A.No.XII and XIII are concerned, as observed earlier, when trial is not yet commenced, defendant No.1 has every right to produce the documents in support of the contentions taken by him. Further when defendant No.1 has relied upon the Will allegedly executed by his father, so also his mother and according to him those documents are material documents to prove the defence taken by him, it is absolutely required on safer side to keep the said documents in the safe custody. Accordingly Point No.2 is answered in the affirmative and proceed to pass the following:-

ORDER

I.A.No.XI filed by the defendant No.1 under Order VI Rule 17 and Section 151 of C.P.C., is allowed.

Defendant No.1 is permitted to carry out amendment in the written statement.

I.A.No.XII filed under Order VIII Rule 1A and Section 151 C.P.C., and I.A.No.XIII filed under Section 151 of C.P.C., are allowed.

Documents are taken on record.

Office is directed to keep the documents i.e., original Wills dated 29-03-1952 and 8-05-1984 in safe custody.

No order as to costs.

(Roopashri)

Senior Civil Judge & ACJM, Karkala.