

## **ORDERS ON I.A. NO. V AND VI**

1) The plaintiff has filed I.A.No.5 under Order 6, Rule 17 Code of Civil Procedure seeking to add additional Para IV(a) and IV (b) in plaint as proposed in the application Schedule as follows :-

In plaint after Para IV, add as :

IV(a) : Plaintiff submits that Subbamma's son by name Putta Rangachari is also called as Rangachari. Plaintiff and defendant No.1 and 2 are the son and daughter of Putta Rangachari alias Rangachari. Plaintiff and defendant No.1 & 2 who have succeeded to the estate of deceased Neelakantachari as well grand mother. Therefore, plaintiff is the son and defendant No.1 & 2 are son and a daughter and the denial by the Defendant No.3 that, plaintiff and defendant No.1 and 2 are no way connected to the family of Subbamma or Putta Rangachari alias Rangachari.

IV(b) : Plaintiff being not a party to the suit O.S.No.76 of 2005 on the file of this Hon'ble Court which is filed by the son and daughter of Defendant No.3 and his wife Vijayalakshmi for Partition including the plaint schedule mentioned properties. The judgment passed in R.A.No.68 of 2007 by the

Hon'ble Fast Track Court No.III, Hosapete is a judgment in person but not Rim and not binding on the plaintiff and defendant No.1 and 2 and said facts came to the knowledge of the plaintiff recently. Defendant No.3 being aware that, plaintiff and defendant No.1 & 2 are the grandson and a daughter of late Subbamma. Purposefully suppressed the material facts and to grab the properties belonging to Plaintiff's grandmother Subbamma.

2) The plaintiff has also filed I.A.No.6 under Order 7, Rule 14 Code of Civil Procedure seeking to produce documents in support of his case.

3) The gist of affidavits sworn by the plaintiff to both applications is that the matter is posted for evidence. Defendant no.3 has filed his written statement stating that, plaintiff, defendant no.1 and 2 are sons and daughter of one Rangachari, but not sons and daughter of Putta- Rangachari, and further they are not family members of Vaikuntachar or Putta Rangachari. It is further stated that wife of defendant no.3 namely Vijayakakshmi and her children filed suit in O.S.No.76/2005 before this Court including the plaint "B" Schedule property and R.S.A.No.5122/2008 filed by defendant no.3 is pending before Hon'ble High Court of Karnataka, Dharwad. Hence it is just and necessary for the plaintiff to

amend the plaint as proposed to state that his father was called as Rangachari as well as Putta Rangachari. The amendment is necessary for determining real controversy between parties. Further it is averred in the affidavit of I.A.No.VI that the proposed documents are obtained by plaintiff from public office and same are necessary to substantiate his case. These amongst other grounds it is prayed to allow both applications.

4) The defendant no.3 has filed his common objections to both applications, which is adopted by defendants no.4 and 7. It is averred in the objections that applications are not maintainable and same are liable to be dismissed. Further applications are filed at belated stage and delay is not explained. The applications are filed to harass the defendant no.3 and other defendants to yield them for settlement and also to dodge the case. These amongst other grounds it is prayed to reject both applications.

5) The following points arise for my consideration.

1. Whether proposed amendment is necessary for deciding real controversy between parties?
2. Whether plaintiff has made out grounds to allow the production of documents proposed?
3. What order :-

6) Heard both sides, perused records.

7) My findings on above points are as under

POINT No.1 AND 2 : In the AFFIRMATIVE

POINT NO.3 : As per final order, for the following

### **REASONS**

8) **POINT NO.1 AND 2** :- The plaintiff has filed present suit for partition and separate possession of suit properties. The defendant no.1 and 2 have also prayed for partition by way of written statement of defendant no1, which is adopted by defendant no.2. However defendant no.3, 4 and 7 have resisted the case of plaintiff by filing their separate written statement. Now the matter is posted for evidence after framing issues. At this stage the plaintiff has come up with present application to amend the plaint and thereby to explain that the name of his father was Rangachari alias Putta Rangachari and he has also sought for pleading previous litigation in O.S.No.76/2005. The proposed amendment appears to be necessary, in view of serious rival contentions taken by defendant no.3 in his written statement. Moreover the proposed amendment does not seem to change the nature and cause of action in the suit.

9) The counsel for plaintiff has relied upon case law reported in 2016 (1) **KCCR 73, between Smt. Puttamamma Vs. Giryappa and others**, wherein it is held that Court not to go into correctness or falsity of case for

amendment.- So also, Court not to record finding on merits of amendment sought for.

10) Thus it is not the stage to go deep into merits of proposed amendment and plaintiff may be permitted to amend the plaint to prove his case on his own strength. Moreover the documents proposed in I.A.No.VI also appears to be necessary for enabling plaintiff to prove his case. No hardship and injury will be caused to other side if proposed amendment is allowed and documents proposed are taken on record. The delay and inconvenience caused to other side may suitable compensated by means of cost. Hence sufficient grounds are made out by the plaintiff to allow both applications. Hence point no.1 and 2 are answered in the affirmative.

11) **POINT NO. 3** : For the reasons stated and findings given on point no.1 and 2, following is :

**ORDER**

I.A. V filed by plaintiff under Order VI Rule 17 C.P.C. is allowed on cost of Rs. 300/- Subject to cost plaintiff is permitted to amend the plaint as proposed in I.A.No.V.

I.A.No.VI filed by plaintiff under Order VII Rule 14 C.P.C. is allowed on cost of Rs.50/-. Documents enclosed with I.A. No.VII are taken on records.

Senior Civil Judge, Kudligi