

ORDERS ON IA NO.9 FILED BY THE DEFENDANTS
U/O 6 RULE 17 R/W SECTION 151 OF CPC

- 1.** Plaintiffs have filed the present suit for the relief of declaration of title, perpetual injunction, rectification of ROR and other alternative reliefs.

- 2.** When the case was at the stage of cross examination of PW-1, the defendants have filed the instant application praying this court to allow them to add the defence in their written statement that this court has no jurisdiction to try this suit as the value of the suit property exceeds the jurisdiction of this court.

- 3.** In the affidavit annexed to the application it is averred that the plaintiff has filed the present suit for declaration and injunction as against the defendants and the same is not maintainable in the present form. It is averred that the proposed amendment will not change the nature of this suit. The proposed amendment is very much necessary to resolve the real dispute involved between the parties. Further, even the present suit is also at the initial stage, If the application is allowed no hardship will be caused to the plaintiffs. On the other hand, if the application is not allowed then the defendants will be put to untold hardship. Hence with these submissions the defendants have prayed to allow the application.

4. The application was objected by the plaintiffs by filling their objection by contending that the application filed by the defendants is not maintainable under the law. The defendants have filed the present application to drag on the above case and to abuse the process of law. This suit the of the year 2017 which was previously dismissed on the point of limitation. Thereafter, the appeal was preferred and after its remand the the defendants are belatedly filing the instant application. The reasons assigned in the accompanying affidavit is not just and proper. The defendants have filed the present application to further drag on the above case. The proposed amendment is not necessary for adjudication of real dispute between the parties. If the proposed amendment is allowed then the nature of the suit will be changed. With these objections plaintiffs have sought for dismissal of the application.

5. Heard both the sides on IA No.9. Perused the records. The following points arises for my consideration:

POINT No.1: Whether the defendants have made out valid grounds to allow the application?

POINT No.2: What order?

6. My answers to the above points are as hereunder:

Point No. 1: In the Negative.

Point No. 2: As per my findings on point No.1 for the following:

REASONS

7. POINT No.1: Plaintiffs have filed the present suit for the relief of declaration, injunction and for other reliefs. By filing the present application the defendants are intending to take the defence that since the value of the suit property exceeds the jurisdiction of this court, this court has no pecuniary jurisdiction to try this suit. I have carefully gone through the written statement filed by the defendants. At page No.3 and para No.15 of their written statement the defendants have already taken up the contention that the market value of the suit property is more than Rs.10,00,000/- and therefore, this court has no pecuniary jurisdiction to try this suit. Since in their written statement the defendants have already taken up the defence on the point of pecuniary jurisdiction, no purpose will served by allowing the defendants to once again take the very same defence in their written statement by way of amendment. Therefore, since the defendants have already taken the defence on the point of pecuniary jurisdiction in their written statement, the proposed amendment to incorporate the very same defence in the written statement is totally unwarranted and uncalled for. It appears that inspite of taking the defence in their written statement about the jurisdiction of this court, the defendants have intentionally filed the present application to delay the progress of this suit. The application is devoid of merits and by filing the present

application the defendants have abused the process of law. Accordingly the present application fails. **Accordingly the point No.1 is answered in the Negative.**

8. POINT NO.2: In view of my above findings and discussions on point No.1, I proceed to pass following:

ORDER

IA No.9 filed by the defendants U/o 6 rule 17 R/w Section 151 of CPC is hereby dismissed on cost of Rs.800/-.

On perusal of the issues it is found that the issue on pecuniary jurisdiction of this court is not framed. In view of the contention taken by the defendants at para No.15 of their written statement, additional issue is framed on the point of pecuniary jurisdiction of this court. The additional issue is treated as preliminary issue.

To hear on Addl. Issue No.1.
Call on: 17.11.2023.

C. J & JMFC, YADGIR