

MHAU060005982006



ORDER BELOW EXH.151 IN R.C.S No.77/2006

1. The defendant No.2 has moved this application under Order 6 rule 17 of Code of Civil Procedure (for short 'C.P.C.') for filing amended written statement.

2. The defendant no. 2 contended that, he has changed his advocate on the last date. The Plaintiff has filed amended plaint in the suit. Therefore, in respect of the said amendment it is necessary to file amended written statement. However, his previous advocate did not give him good advice, therefore, the defendant No. 2 has filed pursis stating that his previous written statement be treated as written statement of the amended plaint. Due to amendment in the plaint the nature of the suit has been changed. Therefore, to decide the suit on merit it is necessary to file amended written statement. Therefore, seeking permission to file amended statement to the suit.

3. The Plaintiff has filed his say on the back side of the application and objected the application. The Plaintiff contended that the application is misconceived and not tenable at law, hence deserves to be rejected. The application filed in the form is not tenable at law. The application though filed under order 6 rule 17 of the CPC, there is no mention of proposed amendment in the body of the application. Hence the application may kindly be rejected with heavy cost and obliged.

4. Perused application, say and pleadings. Heard both sides.

5. The suit is filed for partition and declaration on 6.6.2006. The present defendant No.2 has filed his written statement below Exh. 32 on 21.9.2006. The record shows that the Plaintiffs have carried various amendments time to time in the plaint as follows ; As per order below Exh. 38 dated 19.07. 2007, as per order below Exh. 90 dated 21.07. 2011, as per order below Exh. 118 dated 20.12.2012, as per order below exhibit 133 dated 7.03.2013, as per order below exh. 144 dated 6.02.2014. After this amendments in the plaint the defendant No. 2 did not file his amended written statement to any of the amendment. However, the defendant No. 2 has filed his previous written statement adoption pursis below Exhibit 33 dated 21.09.2006, thereafter, he has filed written statement adoption pursis below Exh. 98 dated 18.08.2011. Thereafter, the defendant No. 2 filed an application below exh. 148 dated 3.10.2013 for seeking permission to discard his previous written statement and adopt the new written statement coupled with adoption pursis below Exh.149. However, my learned predecessor has rejected the said application. Thereafter, the plaintiff's application below Exh.144 for the amendment in the pleading about the valuation of the newly added suit properties was came to be allowed on 30.01.2014. The plaintiffs have carried out the amendment on 6.02.2014. Thereafter, the defendant No. 2 filed present application on 9.01.2014.

6. On the above background if we peruse the present application it reveals that defendant No. 2 filed this application under order 6 rule 17 of the C.P.C. for amendment in the written statement. However, in the whole application the defendant No. 2 nowhere mentioned that what kind of amendment he wanted to do in his written statement. The proposed

amendment is absent in the application. On the contrary it appears that the defendant No. 2 is seeking permission to file amended written statement to the amendments carried out by the Plaintiff's time to time. Now the question is whether the defendant no.2 can filed amended written statement to the amendments carried out by the plaintiffs time to time. The defendant no.2 has given reason that due to bad advice of his previous advocate he could not filed the proper written statement to the amendments carried out by the plaintiffs. It is settled law that the parties should not suffer for the negligence of the counsel. If we perused the amendments carried out by the plaintiffs time to time as mentioned above, it prima facie reveals that those amendments are material in nature by which plaintiffs have added other properties as well as parties to the suit. Though the newly added properties and parties did not change the nature of the suit, but they certainly brought material changes in the suit. Therefore, the defendants have right to amend their written statement to the extent of amendments carried out by the plaintiffs. However, the defendants have no right to discard their previous written statement.

7. In the case in hand if we perused the record it appears that till today no any adverse order has been passed against the defendant no.2 for non filing of his amended written statement after the last amendment carried out by the plaintiffs. However, present application is filed by the defendant no.2 almost after 11 months after filing amended plaint by the plaintiffs on 13.02.2014. Therefore, though there is no adverse order passed against the defendant no.2, however, there is some delay in filing amended written statement to the amended plaint. No doubt the present application is filed by the defendant no.2 under O.6 R. 17 of CPC, without mentioning any proposed amendment, however, the contents of the application shows that the defendant no.2 is seeking the permission to file

amended written statement to the amended plaint of the plaintiff. Therefore, though the defendant no.2 has not mentioned any proposed amendment in the present application, however, it does not vitiate the purpose of the application. If the application is allowed it will not prejudice the plaintiffs. On the contrary it will help to decide the suit on merit.

8. In the light of above discussion I am of the view that the it is necessary to give opportunity to the defendant no.2 to file his amended written statement to the amendments carried out by the plaintiffs in the interest of justice. However, at the same time it is necessary to impose costs on the defendant no.2 for delay caused to file the application. Hence, I passed following order.

ORDER

1. The application Exh.151 is allowed subject to costs of 1000/- payable to plaintiffs.
2. The defendant no.2 shall filed his amended written statement if any to the amended pleadings of the plaintiffs on or before next date without fail.

Date: 08.12.2022

(P. M. Korse)
Civil Judge, J.D.,
Kannad.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file order are same, word to word as per the original Order.

Name of the Stenographer : Y. S. Mali

Court : C.J.J.D. & JMFC, Kannad.

Date : 08.12.2022

Order signed by the
presiding officer on : 08.12.2022

Order uploaded on : 09.12.2022