

Order 02

04.4.24

The record is put up today on the basis of a petition filed by the plaintiffs, who file a separate application u/o 6 Rule 17 read with section 151 CPC praying for amendment of plaint.

Heard the Ld. Advocate for the plaintiffs in respect of the prayer for amendment. Perused the application, whereby the plaintiffs have prayed for amending the plaint in the manner as indicated in the schedule of the instant application mainly intending to describe the nature of the suit as a suit for partition in addition to the earlier nomenclature as appearing in the plaint.

Upon considering the proposed amendment in the context of the nature of the suit as it now stands, I feel that the proposed amendment is very formal in nature and if allowed will not in anyway change the nature or character of the suit nor will the same cause any injury or prejudice to the defendant, but the same appears to be essentially necessary for proper adjudication of all the disputes involved between the parties in respect of the suit property in view of the fact that the plaintiff has already incorporated the relief in the shape of partition in the original plaint without however disclosing the same while describing the nature of the suit.

Considered a such, I am inclined the allow the instant application.

Hence it is

Ordered

that the application of the plaintiffs u/o 6 Rule 17 read with section 151 CPC filed this day is hereby allowed treating the same as a part of the original plaint. Amend the plaint accordingly.

Plaintiffs are directed to furnish amended copy of plaint at once.

D/C by me

Judge

Judge 2nd Bench

Later

In terms of the order passed above, plaintiffs file amended copy of plaint along with a petition praying for acceptance of the court fees of Rs. 50/- furnished by them.

In such circumstances, office is directed to at once report regarding the sufficiency or otherwise in respect of court fees paid by the plaintiff upon the plaint as amended.

D/C by me

Judge

Judge 2nd Bench

Later

The Ld. Advocate for the plaintiffs now moves the application under Order 39 Rules 1 and 2 read with section 151 of CPC today for an ad-interim order of temporary injunction.

It is reported from the office that court fee paid is proper and that no caveat is pending. Accordingly the petition is taken up for hearing.

Heard the Ld. Advocate for the plaintiffs at length.

Requisites have been put in.

Issue notice upon the defendant, calling upon him to show cause within 15 days from the date of receipt of this notice as to why the prayer for temporary injunction shall not be granted.

In short, the case of the plaintiffs is that the suit property as described in the schedule to the instant application is an undivided joint property of the parties to this suit not having been partitioned as yet by metes and bounds. It is also the case of the plaintiffs that the defendant is regularly disturbing them with threat to lodge false complaint against them apart from pressurizing them to have their share transferred to purchasers according to the choice of the defendant for which the plaintiffs are under serious apprehension that they may be ousted from the peaceful possession and enjoyment of the suit property at any point of time. For all the reasons the plaintiffs, by filing this suit, have come up with the instant application.

Upon considering the submissions made by the Ld. Advocate for the plaintiffs as well as regard being had to the copies of documents furnished on their behalf including registered Deed of gift dtd 7.5.1998 executed by Jharna Seal in favour of the defendant including the averments made therein, death certificate of the mother of the plaintiffs, Adhar cards, General power of attorney etc., I feel that at least at this stage of this suit the plaintiffs have been able to make out a good prima facie while the balance of convenience and inconvenience appears to be tilted in their favour and that apart exigency also appears to be involved in the matter.

Considered as such, both the parties are hereby directed to maintain status quo in respect of possession over the suit property as on this day till 19.04.24.

The plaintiffs are to comply with the provisions of the Order 39 Rule 3(a) and (b) CPC.

To date for S/R and A/D.

D/C by me

Judge

Judge 2nd Bench