

21.10.2024.

ORDERS ON IA NO.2/2023

Instant application has been filed by GPA holder of plaintiffs under Order VI Rule 17 r/w Section 151 of CPC, requesting the Court to permit the plaintiffs to amend the plaint as shown in schedule to the application.

2. The applicant/GPA holder of plaintiffs has sworn to his affidavit filed in support of application that, since inception of suit the plaintiff No.2 was represented by defendant No.5. after plaintiff No.2 attaining majority, defendant No.5 was discharged from guardianship of plaintiff No.2. earlier suit against

defendant No.1 was abated. Subsequently, by filing applications, LR's of defendant No.1 brought on record. The defendants No.1(a) and 1(b) have not admitted plaintiffs are legal heirs of defendant No.1. the defendants No.1(a) and 1(b) have adopted written statement of defendant No.1. The events mentioned in schedule to the application are subsequent to filing of suit. The proposed pleadings followed by proof hence it is necessary to amend the pleadings. If proposed amendment is allowed no hardship or injury would be caused to defendants. The proposed amendment does not change nature of suit or cause of action, same is necessary for effective adjudication. On these grounds, it is requested to allow an application.

3. The learned counsel for defendants No.1(a) and 1(b) filed objection by contending that, application is not maintainable under law and facts, same is liable to be dismissed. The defendant No.1 died on 14.01.2023 leaving behind heirs who have already brought on record. The biological father of plaintiff used undue influence on defendant No.5 and created theory of adoption. There is no adoption at any point of time. In O.S.No.3773/2004 the issue No.2

was framed that, defendants No.5 and 6 who are plaintiffs No.2 and 3 prove that they are entitled share in suit properties. The court has already answered said issue partly in the affirmative. Therefore, rights of plaintiffs No.1 and 2 in respect of share of defendant No.1 in suit properties cannot be decided in present suit. The defendant No.1 during his lifetime has executed registered Will in favour of his daughter. On these grounds, it is requested to reject the application.

4. Heard on both sides and perused the records.

5. The following points arise for my consideration:

1. Whether applicant/GPA holder of plaintiffs has made out sufficient grounds to allow amendment to the pleadings as prayed in application?

2. What order?

6. My answer to the above points are as follows:

Point No.1: In the affirmative;

Point No.2: As per final order

for the following:

REASONS

7. **POINT NO.1** :- On going through the records, it is worth to note here that, already matter is posted for plaintiff evidence. It is matter of the year 2009. It is evident from records that, suit against defendant No.1 was abated, thereafter by filing necessary applications, his legal heirs who are defendants No.1(a) and 1(b) brought on record. The defendant No.1(a) and 1(b) have filed memo adopting written statement of deceased defendant No.1. Now, plaintiff come up with application seeking amendment to the pleadings on the ground that, the defendant No.1 never married any other person then Smt. Shanthamma. The defendants have produced documents in O.S.No.66/2016 to say there was divorce. It is the defendant No.2 who is only legal heirs of defendant no.1. As such, proposed amendment is very much necessary. The main contention of defendant No.1(a) and 1(b) that, the biological parents of plaintiff created alleged adoption deed.

8. Looking into rival contention of parties, as to whether there was legal and valid adoption or it is created by genetic parents of plaintiffs, in order to

decide these disputed facts, proposed amendment is very much necessary. No doubt it is true, application seeking amendment to the pleadings filed after commencement of trial, as proposed amendment is very much necessary for effective adjudication of dispute involved in suit, same has to be allowed. Further, non allowing of amendment to the pleadings as prayed in application definitely leads to multiplicity of proceedings. Further more, proposed amendment does not cause any hardship and injury to contesting defendants. The proposed amendment does not change nature of suit or cause of action. Proposed amendment is not barred by law of limitation. Hence, I answered Point No.1 in the affirmative.

9. **POINT NO.2** :- In view of discussion as made on point No.1, I proceed to pass the following:

ORDER

IA No.2/2023 filed by the plaintiffs under Order VI Rule 17 R/w Section 151 CPC is hereby allowed on costs of Rs.1,000/-

The plaintiffs are permitted to amend the plaint as prayed in schedule to the

O.S.No.25951/2009

application and furnish amended plaint
on next date of hearing without fail.

Call on 30.10.2024.

XXVIII ACC & SJ., B'luru.