

(1988) 11 KAR CK 0009

In the Karnataka High Court

Case No : C.R.P. No. 3807 of 1988 & C.R.P. No. 3807/1988

S. Sridevi

APPELLANT

Vs

S. Vijay and Another

RESPONDENT

Date of Decision : 16-11-1988

Acts Referred:

Citation : (1988) 11 KAR CK 0009

Hon'ble Judges : M.P. Chandrakantharaj Urs, J

Bench : Single Bench

Advocate : A.J. Sadashiva, for the Appellant; B.K. Sundar Raj, GPA Holder for R1 and Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chandrakantharaj Urs, J.—The short question which arises for consideration in this revision preferred by the 1st defendant against the order made on I.A. 15 is, whether the additional written statement which she proposed, to file should have been permitted by the court.

2. The first defendant herself did not file a written statement in the original suit filed by the respondent, a suit for partition and separate possession of her 1/3rd share in the suit schedule property. Defendant-1 adopted the written statement filed by defendant No. 3. Defendant No. 3 had taken a stand that plaintiff had no right of any kind in the suit schedule property much less 1/3rd share. If that is adopted by the 1st defendant now the prayer made in the additional written statement to the effect that in the event the suit is decreed, the 1st defendant should also be declared her share and put in separate possession of her share, is no more than an alternative plea which was always available to a co-sharer.

3. In a suit for partition when the suit is decreed all the sharers shall have their shares declared and separate possession given and they are bound to pay court-fee if they want a share in the property, even without a specific plea in that behalf.

4. Under Rule 9 of Order 8 there is ample scope for the court to apply its mind in each case to permit or not to permit additional written statement. It should not be denied for sake of mere denial. It should be allowed if there is no prejudice likely to be caused to the plaintiff or any of the parties. In that view of the matter it was only a formal amplification of a legal right already available to the 1st defendant and the court should have allowed the amendment, having regard to the wide powers and discretion vested in the trial court under Order 8 Rule 9.

5. Therefore, this revision succeeds. I.A. 15 shall be allowed and the additional written statement shall be recorded. There is no need to frame a separate issue and any issue already framed should cover the claim now made as an alternative plea by the 1st defendant.