

Orders on I.A. filed u/O.6 R.17 of C.P.C.

The Petitioner filed this application seeking permission to amend the cause title of the petition by inserting defendants No.1 to 23 as parties.

2. In support of the I.A., the counsel appearing for the petitioner filed a memorandum of Facts submitting that while filing the FDP only contesting respondents made a party since all the defendants No.1 to 23 have sold the schedule property in favour of defendant No.24 and 25 and received their respective sale consideration without giving share to the petitioner. The defendants No.1 to 23 were *exparte* in the suit also. Therefore the defendants were not necessary parties in the FDP. At the time of filing of the FDP, the office or other contesting defendants also did not raise any objection regarding inserting all the defendants. Therefore, they may not be necessary parties in the FDP Proceedings, may be dispensed with to notice to them. Hence prayed to allow the application.

3. The Respondents No.1 and 2 have filed their objection statement to the I.A. submitting that the petitioner has contended in the plaint that the defendants 1, 5, 7 to 9, 12, 13, 15 and 23 had executed registered sale deed dated 3-12-2012 in favour of defendants No.25 and 26 and in the amendment application, he has contended that defendants 1 to 23 have sold schedule property in favour of defendants No.24 and 25 and deliberately the defendants 1 to 23

have not been made parties to the present proceedings. The application does not made out any ground to seek amendment of petition on fresh cause of action. The petitioner is said to have attained majority and still he is being represented by natural guardian and mother. Hence, prayed to dismiss the application.

4. Arguments heard.

5. The only Points that arise for consideration are as follows:

1. Whether petitioner has made out a ground to allow this Application?

2. What Order?

6. The answers to the above Points are:

Point No.1 – In the Affirmative,

Point No.2 - As per Final Order,

for the following:

REASONS

7. **Point No.1:** Admittedly the petitioner herein had filed a suit in O.S.No. 8189/2012 before this Court for the relief of partition and separate possession of his legitimate share in the suit property and also for Declaration and Permanent Injunction. It is also an admitted fact that in the said suit, the plaintiff has made 26 defendants as party defendants and field the said suit which was came to be partly decreed by granting 1/8th share to the plaintiff in the suit property.

The relief sought by the plaintiff for Permanent Injunction is rejected. The Court has also decreed that the sale deed dated 3-10-2012 executed in favour of defendants No.25 and 26 by the defendants No.1, 5, 7, 8, 9, 12, 13 and 23 is not binding on this plaintiff to the extent of his share. The plaintiff, in order to exdcute the said Judgment and Decree filed this petition praying to carve out his 1/8th share as per the decree passed in O.S.No. 8189/2012.

Admittedly in this petition the petitioner, except making respondents No.1 and 2 as party to this petition, has not included all the defendants who are parties in O.S.No.8189/2012. The petitioner in order to include all the party defendants who are parties in O.S.No. 8189/2012 field this application. No doubt, the petitioner, in support of the I.A. has not sworn to an affidavit as required under law, however, only on t his ground the application cannot be rejected. As I have discussed supra, the plaintiff herein, without impleading all the parties who are defendants in the suit filed in O.S.No.8189/2012, filed this suit. Hence, it is just and necessary to include all the parties who are party defendants in O.S.No.8189/2012. Even the respondents in their objection statement stated the same fact and stated that the petition itself is not maintainable unless the petitioner has included all the parties who are party defendants in the original suit. Therefore it is just and necessary to allow this application. The petitioner has

made out a ground to allow this application. Hence, I have answered Point No.1 in the Affirmative.

8. Point No.2: For the aforesaid reasons, this Court proceeds to pass the following:

ORDER

The Application filed by the petitioner u/O.6R.17 of C.P.C. is hereby allowed.

The petitioner is permitted to amend the cause title of the petition.

For amendment and to furnish amended petition and also take steps by 23-09-2021.

(Ishrath Jahan Ara)
III A.C.C. & S.J., Bengaluru.