

ORDERS ON I.A.NO. VI

The plaintiffs have filed this application under Order VI Rule 17 CPC seeking permission to amend the plaint as per schedule by allowing this application in the interest of justice.

2. It is submitted in the annexed affidavit, the plaintiffs have filed this suit for partition and separate possession. At the time of filing of suit, the plaintiffs have not given any information about four portion of the suit schedule property in RS No.165/B to an extent of 01Ac-04Gs situated at Ingali village, Tq: Hukkeri. Further it is stated that, at the time of filing of suit they informed the advocate as defendants have obstructed their peaceful possession. Further it is stated in the written statement that, the defendants have mentioned their being a devide the shares in RS No.165/B. But, the defendants have not ready to give evidence before the Court to that effect. Therefore the burden is on the defendants to prove the partition over the four portions (4 ಪಟ್ಟಿಗಳು). Therefore, they prayed to allow the application.

3. On the other hand the defendants have not filed any objection to IA No.VI, hence the objections on IA taken as not filed.

4. I have heard the arguments.

5. Now the point that arise for my consideration is:

1. Whether the plaintiffs have made out grounds to allow the application?

2. What order?

6. My answer to the above point No.1 is in the Negative and point No.2 as per the final order for the following:

REASONS

7. **Point No.1:** On perusal of the entire material which is available on record it appears that, the plaintiffs have filed this suit for partition and separate possession. When the case is posted for arguments, the plaintiffs have come up with this application for proposed amendment. It is to be noted that, the plaintiffs have filed this suit for partition against the defendants. Now the plaintiffs have sought for relief of permanent injunction by way proposed amendment. At this juncture it is relevant to quote the provisions of **Order VI Rule 17 of CPC** which reads thus: *no amendment application should not be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence.* On perusal of application the plaintiffs have pleaded that, he could not stated to his

advocate about four portions are situated in the suit schedule property and the defendants have obstructed the peaceful possession of the plaintiffs over the suit schedule property. If the proposed amendment is to be allowed the nature of suit will be change. More over the plaintiffs have not sought for relief of partition and separate possession in respect of joint family or co-parcenery property. Therefore this court is of the considered view that at the stage the proposed amendment is allowed, the nature of the suit will be change. Hence the application filed by the plaintiffs is liable to be dismiss with cost. **Accordingly, the point No.1 is answered in the Affirmative.**

8. **Point No.2:** In view of the finding given in the point No.1, this Court proceed to pass the following:

ORDER

**The I.A.No.VI filed by the plaintiffs
under order VI Rule 17 r/w Sec. 151 of CPC
is hereby dismissed with cost of Rs.1,000/-.**

For Arguments , Call on 12.01.2023.

Civil Judge & J.M.F.C. Hukkeri

