

ORDER ON I.A. No.3

1. This application is filed by the plaintiffs with a prayer to permit them to amend plaint as sought in the application.

2. In the subjoined affidavit filed along with the application, the plaintiff no.2 has sworn in the affidavit and contended that, this suit is filed for the relief of partition and separate possession in respect of suit schedule properties. Further the plaintiff no.2 has stated that, during the pendency of this suit , the defendant no.1 has alienated portion of suit schedule-I property to defendants no.5 to 9. The said subsequent pleadings are required to be made in the plaint by way

of proposed amendment. Hence prays to allow the application.

3. On the other hand, the defendant no.1 has filed objection to said application and contended that, the plaintiff have not assigned proper reasons for permitting them to amend the plaint. Further contended that, the proposed amendment will change the cause of action and also nature of the suit. Therefore, prays to reject the application.

4. Heard the arguments advanced by the plaintiff and defendants counsels.

5. Upon considering the application, affidavit filed along with application, and objections the following points arises for my consideration:

P O I N T

1. Whether the plaintiffs have made out sufficient grounds to amend the plaint as sought in application?

2. What Order?

6. On hearing both sides and perusal of pleadings and, objections on record, my answer to the above points are;

Point No.1: In the affirmative.

Point No.2: As per final order for the following:

R E A S O N S

7. **Point No.1:** I have carefully gone through the pleadings of the parties, application, reasons stated in the affidavit filed along with IA, objections and other materials on record. On going through the above materials, it reveals that, the plaintiffs are intending to narrate the facts regarding alienation of suit schedule-I portion properties made by the defendant no.1 during the pendency of the suit. The plaintiff has stated in the affidavit that, the proposed amendment is necessary to include in the plaint.

8. On perusal of the plaint averments it reveals that, this suit is filed for the relief to

partition and separate possession by metes and bounds. Therefore, considering the nature of suit and also contention taken by the plaintiff that, during the pendency of the suit alienation made by the defendant no.1 which are the further facts arising subsequent filing of the suit. Hence, the proposed amendment is very much necessary to adjudicate the matter on merits. If the proposed amendment is allowed it will neither change the nature of suit nor cause of action. Therefore if the proposed amendment is allowed, then no surprise or harm will be cause to the other side. Therefore, in view of the above reasons, **I hold the point No.1 in the affirmative.**

9. **Point No.2:-** In view of my reasons assigned on above point No.1, I proceed to pass the following:

O.S.119/2018

ORDER

The I.A.No.3 filed by the plaintiff U/Order VI Rule 17 R/w sec.151 of CPC is hereby allowed.

The plaintiffs counsel is directed to amend the plaint as sought for in the application.

Call on: for amendment by
05.1.23

Sd/-

**Senior Civil Judge & JMFC.,
Khanapur.**