

15-04-2025

Plt. - P.M.,
Def.1(a,b) - L.V.P.,
Def.1 (c & d)- N.N.,
Def.2, 3- S.V.G.,

ORDERS ON I.A.No.VIII

The instant application has been filled by the counsel for the plaintiff U/o.VI Rule 17 R/w.Sec.151 of C.P.C for amendment of plaint.

2. In the affidavit, the the plaintiff has stated that she has filed the present suit for the relief of Partition and Separate Possession. The proposed item No.6 property bearing Sy.No.205 and the proposed suit item No.7, 8 properties are the ancestral and Joint Family property and they are the joint possession and enjoyment over the same. At the time of filing of the suit the plaintiff could not trace the necessary documents and recently procured the same in respect of the proposed properties. The proposed amendment is necessary. Hence, prayed to allow the application.

3. The application is opposed by the counsel for the defendant No.2 by stating that the same is not maintainable under law. It is stated that the proposed item No.6 property is a granted property in favour of defendant No.2. The proposed

item No.7 property has been purchased by the defendant No.2 through registered Sale Deed dated 13.08.2004. The proposed item No.8 property has been already sold by the father of the plaintiff vide, Sale Deed dated 22.12.2000 in favour of one V. Rajanna. The proposed amendment is not necessary. Hence prayed to reject the application with cost.

4. Heard both sides.

5. **The following points would arise for my consideration:**

1. Whether the plaintiff has made out grounds to allow the application ?
2. What order ?

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

Point No.1 : **Partly in the Affirmative**

Point No.2 : **As per final Order
for the following :**

REASONS

7. **Point No.1:** This is a suit filed by the plaintiff against the defendant for the relief of Partition and Separate Possession. The instant application came to be filed to insert the proposed item No.6 to 8 properties in the schedule of the plaint and to

carryout necessary amendment by inserting Para No.2(a) in this regard. In the affidavit, the plaintiff has clearly stated that recently she has procured the documents pertaining to the proposed properties and in view of the same and also because those properties are ancestral and Joint Family properties, the amendment is necessary. The counsel for the defendant No.2 has produced the order passed by Hon'ble High Court of Karnataka in RSA.No.499/2011 C/w RSA.No.653/2011, wherein the compromise is recorded. In Para No.10 of the compromise petition the appellant by name kumari Asharani has under taken to clear the claim of the present plaintiff Smt. Lakshmiddevamma in the present suit. However, the mere undertaking by the said Asharani before the Hon'ble High Court of Karnataka does not take away the right of the plaintiff to see partition of the suit properties. The defendant No.2 has also produced the copy of Sale Deed dated 13.08.2004, which shows that the defendant No.2 has purchased the proposed item No.7 property from one R. Vishwanath. The plaintiff is claiming that the said property is a Joint Family property. It requires trial to decide the same. Though, the defendant No.2 has stated in the memo dated 16.11.2024 that the copy of order passed by land tribunal in respect of proposed suit item No.6 property has been produced. The same is not fund along with the memo. It is necessary to decide whether the land tribunal has granted the property in favour of defendant No.2 on behalf the Joint Family or in his individual capacity. Moreover, the parties to RSA.No.499/2011, which arose out of O.S.No.373/1996 on the file of Principal Civil Judge and J.M.F.C, Devanahalli, have compromised the matter,

wherein the proposed suit item No.7 property has been allotted to the share of defendant No.2 herein. Under such circumstances, the trial is necessary in respect of proposed suit item No.6 and 7 properties to decide whether those properties belong to the Joint Family or not.

8. The plaintiff has also sought to insert proposed item No.,8 property in the schedule of the plaint. The defendant No.2 has produced the Sale Deed dated 22.12.2000, wherein it is appearing that the father of the plaintiff has sold the property in favour of one V. Rajanna. The plaintiff being the daughter of the joint family cannot challenge the alienation made by her father prior to 20.12.2004. Under such circumstances, the plaintiff has only made out grounds for amendment of plaint in respect of proposed item No.6 and 7 properties and to insert those properties in the schedule of the plaint. There is no grounds made out to insert the proposed item No.8 property in the schedule of the plaint and to amend the plaint in respect of the said property. Hence, I answer **Point No.1 Partly in the Affirmative.**

9. **Point No.2** : In view of the above findings, this court proceed to pass the following:

ORDER

I.A. No.VIII is allowed in part.

The plaintiff is permitted to carryout amendment only in respect of proposed item

No.6 and 7 properties and to insert those properties in the schedule of the plaint.

The application in respect of proposed item No.8 property is dismissed.

No order as to cost.

**For amendment and amended plaint
by: 25-06-2025.**

Sd/-

**Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**