

28-09-2022

ORDERS ON I.A.No.15 AND 16

The plaintiff has filed the above I.A.No.15 Under Order 1 Rule 10(2) of C.P.C. and she files I.A.No. 16 Under Order 6 Rule 17 R/w. Sec.151 of C.P.C. by seeking to implead additional defendant No.10 in the suit and also for including items No.10 to 16 in the plaint schedule.

2. In support of both the I.A.No.15 and 16, the plaintiff has filed her affidavit by deposing on oath. Briefly stated, in support of I.A.No. 15 it is contended by her that, the proposed defendant No.10 is the wife of defendant No.2 by name Munishamappa and the properties are purchased in her name out of the joint family funds. Therefore, the proposed defendant No.10 is a necessary party in this suit for partition.

3. In support of her I.A.No.16, the plaintiff has contended that, the proposed items No.10 to 16 sought to be included by way of amendment are the properties purchased by the husband of the proposed defendant No.10 in her name out of the joint family funds. The defendant No.2 and his wife - the proposed defendant No.10 are receiving rents from the item No.4 and they have also

purchased the items No.10 to 16 out of said income. Therefore, it is necessary for the plaintiff to seek partition in these properties by way of amendment of plaint. Therefore, the plaintiff has prayed for allowing both the I.A.No. 15 and 16.

4. The Court has issued notice to the proposed defendant No.10 and she has appeared through her counsel and filed objections to the I.A.No. 15. To the I.A.No. 16, the defendant No.2 has filed his objections. The proposed defendant No.10 has submitted in her objections that, she is not a necessary party to the suit. She has purchased the properties through the financial help rendered by her parents. The plaintiff has already executed release deed on 01-08-2008. By virtue of Sec.14 of Hindu Succession Act, the proposed defendant No.10 became the absolute owner of properties standing in her name. For these reasons, she has prayed for dismissal of the I.A.No. 15.

5. To the I.A.No. 16, the defendant No.2 has also filed objections which are very much similar to those filed by the proposed defendant No.10. In addition to it, the defendant No.2 has contended that, the plaintiff has received her share by executing another release deed dated 03-11-2014 and since the issues are framed in the suit and the case is

posted for cross examination of PW.1, the amendment application is not maintainable for the reason of commencement of trial. Therefore, the defendant No.2 has prayed for dismissal of the I.A.No. 16.

6. The parties have addressed arguments and the proposed defendant No.10 has relied on the Judgment reported in **2022 Live Law (SC) 515** in between **Munnidevi V/s. Rajendra.**

7. On appreciation of the facts leading up to filing of the I.A.No. 15 and 16, the following Points are arisen for consideration:

POINTS

1. Whether the plaintiff shows that, the proposed defendant No.10 is a necessary party whose presence is necessary for complete and final adjudication of all the disputed facts?

2. Whether the plaintiff shows that, the amendment sought under I.A.No. 16 is

***necessary for final
adjudication of the above
suit?***

2. What Order?

8. The Court answer the above points as follows;

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

***Point No.3 : As per the final order
for the following;***

REASONS

9. **Point No.1 and 2:-** The I.A.No. 15 and 16 are complementary to each other and the answer given to the Point No.1 automatically follows the Point No.2 and therefore, both are discussed together.

10. The above suit is filed in the year 2010 by the plaintiff and the case was posted for cross examination of PW.1 finally on 31-08-2021 and it was adjourned to 24-09-2021. On the said date of hearing, the plaintiff has filed the above two applications. The suit is for partition and separate possession and also for declaration about sale deeds of the year 2002 and release deed of the year 2008 as not binding on the plaintiff.

11. The proposed defendant No.10 is alleged as the wife of the defendant No.2 and it is contended by the plaintiff that, in the name of his wife, the defendant No.2 has purchased the items No.10 to 16 out of joint family funds. Both the defendant No.2 and proposed defendant No.10 have contended that, in view of Section 14 of the Hindu Succession Act 1956, the proposed defendant No.10 became the absolute owner of the properties standing in her name. But, the Court has to give opportunity to the plaintiff to prove that, those items No.10 to 16 are also joint family properties and similarly, the Court has to give opportunity to the proposed defendant No.10 to prove that, these properties are her self acquired properties purchased from the financial assistance given by her parents. In other words, the Court cannot decide the nature of proposed amendment and items No.10 to 16 as the self acquired properties of proposed defendant No.10 only on her objections and therefore, unless the Court records evidence of both parties, the said question cannot be decided unilaterally only on the basis of objection averments.

12. Regarding the amendment being barred after the trial is commenced is concerned, it is decided by the Hon'ble Apex Court and Hon'ble High Courts of various states that,

the partition suit must include all the properties of the joint family and therefore, even if the trial i.e., examination in chief of PW.1 is completed, the proposed amendment is necessary to include the items No.10 to 16 in the suit for final and complete adjudication of all the disputes involved in the suit. Accordingly, the **Point No.1 and 2 are answered in the in the Affirmative.**

13. **Point No.3:-** For the above discussion,the Court proceed to pass the following:

ORDER

The I.A.No.15 filed by the plaintiff Under Order 1 Rule 10(2) of C.P.C. is hereby allowed.

The I.A.No. 16 filed by the plaintiff Under Order 6 Rule 17 R/w. Sec.151 of C.P.C. is hereby allowed.

The plaintiff shall amend the plaint by showing the proposed defendant as the defendant No.10 and by including item No.10 to 16 in

O.S. No. 21/2010

***the plaint schedule and
furnish the amended plaint
on the next date of hearing.***

***Call on for amended plaint
by : 17-10-2022.***

***(Dictated to the typist directly on computer and
corrected and then pronounced by me in the open
Court on 28th September 2022).***

**(MADHUSUDHANA D.K.)
Pri. Senior Civil Judge & J.M.F.C.
Devanahalli.**