

COMMON ORDERS ON I.A.18 AND 19

These applications are pressed into service when the stage of this case set down for cross of D.W.1.

2. The plaintiffs have filed I.A. no.18 Under Order 6 R.17 R/w Se.151 of C.P.C. seeking amendment of the plaint schedule to include properties as schedule (c to g) after schedule (a and b) alleging that they are ancestral joint family properties.

3. The plaintiffs have filed I.A. no.19 Under Order 1 R.10(2) R/w Se.151 of C.P.C. seeking leave of the Court to include proposed defendant no.11 and 12 as party to the suit alleging that they are also members of the joint family consisting of themselves and defendants.

4. The plaintiff no.1 on his behalf and on behalf of other Plaintiffs sworn to an both affidavits separately. The sum and substance of the affidavits are that, this suit is filed seeking partition and separate possession. The defendants filed their written statement denying the plaint averments. The proposed schedule (c to g) are necessary to be included for effective adjudication of the case and to avoid multiplicity of proceedings. The proposed defendants are also members of joint family. The defendants took contention about the non-joinder of necessary parties. He was not aware about the law that, in a suit for partition all the members of the family are to be added as party defendants. By allowing the application neither nature of the suit would change nor introduce new cause of action. If the application is allowed no prejudice will be caused to the defendants. On these averments Plaintiffs sought to allow the application.

5. The defendants filed their separate objections contending that, the applications are not maintainable either under law or on facts and same

is filed only in order to draw the proceedings as much as possible. Affidavits sworn by the Plaintiffs are all false. The proposed properties sought to be included in the suit does not belonging to the joint family. The Genology produced along with the does not contain name of the proposed defendants. Furthermore, nothing was prevented the Plaintiffs to add proposed defendants as party defendants at the time of institution of the suit. If proposed amendment is allowed it will introduce new cause of action and changes the nature of the suit. The proposed amendment is barred by time as it is filed when the stage of the case is set down for cross of D.W.1. On these contentions defendants sought for rejection of the applications with costs.

6. I have heard the arguments on both the sides, perused the entire materials available on record.

7. From the above set of averments and contentions the following points arise for determination:

1. Whether the applicant/plaintiffs have satisfied that the proposed amendment is necessary for proper adjudication of the controversy in between the parties?
2. Whether the applicant/plaintiffs have satisfied that the proposed defendants are proper and necessary parties for proper adjudication of the controversy in between the parties?
3. What order?

8. My finding to the above points are in the affirmative for the following:-

:REASONS:

9. **Point No.1 and 2:-** This is the suit filed by the plaintiffs seeking partition and separate possession of their 1/5th share in the suit 'A'

and 'B' schedule properties bearing Re.Sy. No.39 measuring 36 acres 19 guntas and Re.Sy.No.56/1 measuring 3 acres 35 guntas both are situated at Putlorahalli and Korlakunte village of Challakere Taluk. Plaint averments reveals that suit properties are ancestral and joint family properties of themselves and Defendants. Husband of Defendant no.1 Late. P. Lakshmanreddy, Defendant no.9 and 10 colluding which other got entered their names in the revenue documents without their knowledge. Only after demise of husband of Defendant no.1 Late. P. Lakshmanreddy, the Plaintiffs demanded their share in the suit properties but, they refused to allot the same. Thus, scrutinized revenue documents by that time they came to know about entry of name of husband of Defendant no.1, 9 and 10 in the revenue records. Hence, they constrained to file this suit.

10. On the other hand Defendant no.2 and 10 filed their written statement admitted that the suit properties were belonged to propositus of the family by name Gade Palaiah but, specifically contended that during the life time for propositus Gade Palaiah about in the year 1965 all his children partitioned the properties. As per the said previous partition they are in possession of their respective shares. By way of an amendment to the written statement as per order on I.A. no.12 these defendants alternatively took defence that in case Court come to a conclusion about no partition of any kind was taken place in between the parties to the suit a partition may be effected in non-suit properties bearing Re.Sy. No.28/2, 28/3 and 1/28. The also took contention about the suit is bad for non-inclusion of other joint family properties.

11. The Plaintiffs claims that there was no partition of any kind is taken place in respect of joint family properties whereas, Defendants contends that there was previous partition in the year 1965. In pursuance of the said oral partition all the family members are in possession of their

respective shares. From the rival contentions of the parties it is crystal clear that the dispute revolves around whether the suit properties are ancestral and joint family properties and previous partition pleaded by the Defendants is true or not.

12. The Court has verified the contents of application, affidavit and pleadings of the parties. It is settled law that, the Court may at any stage of the proceedings allow the amendment application which is necessary for the purpose of determining the real questions in controversy between the parties. But, no such application for amendment shall be allowed after the trial as commenced, unless the Court comes to a conclusion that inspite of due-diligence the party could not have raised the matter before the commencement of the trial. If the above proposition is applied to the case on hand, when this application was pressed into service stage of the case is set down for cross of D.W.1. Thereby, trial is already begun and this application is filed at fag end of the case.

13. In so far as the proposed amendment is concerned, by way of amendment the Plaintiffs claim during their arguments that the properties which are now sought to be inserted by way of amendment are also joint family ancestral properties. While the defendants denies the nature of joint family ancestral properties. Admittedly, this suit is filed for the relief of partition and separate possession. It is well settled position of law that all the properties either movable or immovable of the joint family properties should be included in a suit for partition and separate possession. In the case on hand, relationship of the parties is not denied. In fact, defendants have pleaded about the previous partition. Thus, at this stage the claim of the Plaintiffs as to nature of the properties sought to be included cannot be doubted without going into the trial.

14. It is also settled law that, while dealing with amendment application Court cannot go in to the question of merit of such amendment. It can only consider whether such amendment would be necessary for decision of real controversy between the parties concerned. Even if amendment is allowed the burden is upon plaintiffs to prove before the Court the proposed properties sought to be included are also joint family ancestral properties. The initial burden is on the Plaintiffs. Once, the initial burden is discharged, the onus would shift on the defendants. Without providing opportunity to the Plaintiffs to prove the nature of ancestral joint family properties is not proper at this stage. Mere allowing the amendment application in itself would not amount to granting the relief sought in the proposed amendment. The burden still remains on the Plaintiffs to establish the claim made in the proposed amendment. When such being the position of law, Court do not find any hurdle in allowing the application.

15. So far as, with regard to impediment of proposed defendant no.11 and 12 as party defendant to the suit is concerned no doubt, the Plaintiffs have not shown the proposed defendants in the genealogy produced by them along with the plaint. However, it is germane to note that the proposed defendants are shown in the genealogy produced by the defendants in their written statement at para no.7(a). The proposed defendants are shown to be siblings of defendants no.9 and 10. It is no doubt true that, the proposed defendants are womens so in order to deprive them from allotting shares in the joint family must have not included in the suit. Be that as it may. It is well settled position of law that in a suit for partition all the members of joint family is required to be arrayed as party defendants. In view of the fact that, proposed defendants are shown in the genealogy produced by the defendants in their written statement and also contention took in the written statement about non-joinder of necessary party there is no impediment to add them as party defendants. Where

addition of the party is necessary to make full and complete adjudication of the dispute such a party can be added at any stage of the case in the interest of avoiding multiplicity of proceedings.

16. By allowing the application neither nature of the suit would change nor introduce new cause of action. However, considering the fact that, this application has been pressed into service after much belated stage the Plaintiffs are liable to pay reasonable cost to the defendants for inconvenience caused at this stage. Accordingly, Court answer point No.1 and 2 in the **affirmative**.

17. **Point No.3:-** For the forgoing reasons, Court proceed to pass the following:

ORDER

The I.A. No.18 and 19 filed by the plaintiffs U/o. 6 rule 17 and 1 Rule 10(2) R/w Sec.151 of C.P.C. are allowed on cost of Rs.500/- each. Thereby, the plaintiffs are permitted to carry out the proposed amendment within 3 days from the date of this order.

For amendment and amended plaint.

Call on.09.6.2023.

J.M.F.C., Addl. Civil Judge and
Challakere