

IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE

Present : Sri RAMAMURTHY N. B.A., LL.B.,
Addl. Civil Judge & JMFC. Tarikere.

O.S.No.310/2015

Dated: 06th day of February 2021.

ORDER ON I.A.NO.6

The counsel for plaintiff/applicant has filed I.A.No.6. U/O.6 Rule 17 R/W. Sec.151 of CPC seeking permission to implead the proposed item No.2 and 3 properties by amending the plaint.

2. In the annexed affidavit, it is stated that, the proposed properties were acquired by her grand father Muddappa in the year 1939-40, same was standing in his name till today. There is no partition held in respect of said properties, recently she has obtained documents in respect of said properties which are her ancestral properties and she has a 1/4th share in the suit properties. Hence, prays for allow the I.A.

3. In the objection, the defendants have stated that, the I.A. filed by the applicant is not maintainable, the stage of the case is for further cross of P.W.1, if amendment is allowed, there is a serious prejudice to them and amendment is introduced the new case and improvement the lacuna of plaintiff's case and it is totally inconsistency with the present case and proposed amendment is totally changing the original defence and will leads miscarriage of justice. The I.A. is filed at belated stage. Hence, prays for reject the I.A.

4. Heard both side and perused the materials in file.

5. The following points arises for consideration:-

:-POINTS:-

**1. Whether the plaintiff has made
out sufficient ground to allow the I.A. ?**

2. What order?

6. Findings to the above points are as under:-

Point No.1 : In the negative

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

:-REASONS:-

7. Point No.1 :- According to applicant, the proposed amendment by impleading the item No.2 and 3 properties are very essential, the said properties are her ancestral properties which are standing in the name of her grand father, the documents regarding said properties recently obtained. According to defendants, the I.A. filed by the plaintiff/applicant is belated stage, the case of the stage is for further cross of P.W.1. The proposed amendment will defeat the defence.

8. The suit of the plaintiff is for declaration, partition and separate possession. The stage of the case is for further cross of P.W.1, according to P.W.1, she has obtained documents in respect of proposed properties recently. She has filed certified copy of assessment register. Upon perusal of said documents, there is no date of issuance mentioned. Now plaintiff intended to implead the proposed properties as suit properties. In the I.A., it is not stated that, inspite of due diligence, the matter could not be raised after the commencement of trial. Upon perusal of order sheet, it is appeared that, the case is posted for plaintiff evidence on 05/01/2018, thereafter, the plaintiff examined as P.W.1 and partly cross examined by the counsel for defendant. Moreover, the certified copies placed by the plaintiff not shows that, on what date, the plaintiff has obtained the said documents, such circumstance, opinion of this court is that, the plaintiff has not made out sufficient ground to consider her contention as stated in the I.A. Accordingly, this court answered point No.1 in the negative.

9. Point No.2 :- As per the above reasons and answer given to the point No.1, this court proceed to pass the following:-

-:ORDER:-

The I.A.No.6 filed U/O.6 Rule 17 R/W. 151 of C.P.C. filed by the plaintiff/applicant is hereby rejected.

Sd/-

(RAMAMURTHY N.)
ADDL.CIVIL JUDGE & J.M.F.C.,
TARIKERE.