

**ORDER ON I.A.NO.VII FILED BY THE
PLAINTIFF NO.3 UNDER ORDER VI
RULE 17 OF C.P.C.**

The above IA is filed by the plaintiff No.3 by praying to amend the plaint as sought for in the I.A.

2. The I.A. is supported by an affidavit filed by the plaintiff No.3 by contending that, the defendants No.1 and 2 filed their written statement by stating that, there was alleged partition between the family members of the defendant No.1, in which the 2nd defendant by name Nagaraja and deceased Srinivasa is also having some properties, as the 2nd defendant has sold the schedule item No.2 to the defendant No.8 under the registered sale deed dated: 23.11.2020. The 1st defendant has no avocation and after the death of his brothers including his father all the property was looked after by the 1st defendant and the 1st defendant has purchased the item No.2 of the schedule property in his name, as it is the ancestral joint family property, due to reason that, the schedule No.2 he has purchased from the income generated

from the schedule item No.1 and the said amount invested by the 1st defendant he purchased the property of item No.2 and transferred to the 2nd defendant under the alleged registered partition deed within his family members and sold the property item No.2 to the defendants No.8 and 9. The said fact suppressed by the defendants No.1 and 2 as they themselves and the defendants No.10 to 14 are the legal representatives of deceased Shamashetty @ Chamashetty. Hence, they filed suit for partition and declaration that, any alleged sale deed executed by 1st defendant and his family members does not binds the interest of the plaintiff and other legal heirs of deceased Shamashetty @ Chamashetty. Hence, the proposed amendment is necessary , thus the I.A. is filed.

3. On the other hand, the objections filed by the defendants is that, once the trial is commenced the plaintiff is not entitle for amend the plaint. During the course of cross-examination of P.W.1 already given the admission, to wipe off the admission the amendment cannot be allowed. The defendants have

taken specific contention in their written statement. By including another property the plaintiffs sought for amendment, but in the supporting affidavit not stated regarding the said property belongs to their family. Thus, the I.A.be rejected. If the I.A. is allowed, the nature of the suit will be changed and it is against to the defence taken by the defendants. Thus, sought for reject the I.A.

4. Heard arguments submitted by both sides. Perused the materials placed on record.

5. The following points that arise for my consideration are:

1. Whether the plaintiff No.3 has made out grounds to amend the plaint as sought for in the I.A.?

2. What order?

6. My findings to the above points are as under:

Point No.1 : In the Affirmative,

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

REASONS

7. POINT NO.1: The above suit is filed by the plaintiffs against the defendants for partition and separate possession. Now, the matter is posted for defendants' evidence. The proposed defendants 10 to 15 are impleaded. At this stage the plaintiff No.3 filed above I.A. by praying to amend the plaint to insert para No.8(a) after the para No.8 and to insert the schedule No.2 of the property on the ground that, in the written statement the defendants No.1 and 2 stated regarding there was partition in the family member⁴s of the defendant No.1, in which the defendant No.2 and deceased Srinivasa having some properties and defendant No.2 sold the item No.2 to defendant No.8. All the properties looked after by the defendant No.1 and he purchased the item No.2 in his name as it is ancestral and joint family property and the schedule No.2 property purchased from income generated from the item No.1 of the suit property. They filed suit for partition and separate possession. The alleged sale deed executed by defendant No.1

and his family members does not binds the interest of the plaintiff and other legal heirs of deceased Shamashetty @ Chamashetty. Hence, the proposed amendment is necessary. On the other hand, the objections filed by the defendants is that, once the trial is commenced, the amendment cannot be permitted and the P.W.1 has given some admissions and to wipe off the admission the amendment cannot be allowed. There are no reasons to amend the plaint. If the proposed amendment is allowed, it will leads to multiplicity of proceedings and the nature of the suit will be changed. Thus, sought for rejected the I.A.

8. In this case, the plaintiff No.3 seeking for amending the plaint to add para No.8(a) to plead that, the defendant No.1 have no avocation and earnings made in the properties mentioned in the plaint schedule the 1st defendant has purchased the property and the family members have entered into partition and the schedule property is the ancestral property and also sought for include the schedule No.2 of the property as it is

ancestral and joint family property. The defendant raised objections by stating that, the proposed amendment will change the nature of the suit and the proposed amendment will wipe off of the admission given by the P.W.1 in his cross-examination. But, the defendant not specifically stated, which part of the cross-examination of the P.W.1 will wipe off the admission given by the P.W.1. In this case, the plaintiff No.3 seeking for inserting the schedule No.2 of the property and also seeking for amending the plaint by contending that, out of the income of item No.1, item No.2 is purchased by the defendant No.1. Thus, the burden lies on the plaintiff to establish the same. Thus, if the proposed amendment is not allowed the very purpose of filing the suit will be defeated. Thus, an opportunity be provided to amend the plaint as sought for in the I.A. Hence, in view of above said discussions, I hold that the plaintiff No.3 made out grounds to allow the I.A. Accordingly, I answer the above **point No.1 in the Affirmative.**

9. **POINT NO.2** : In the result, I proceed to pass the following :

ORDER

The I.A. No.VII filed by the plaintiff No.3 under Order VI Rule 17 of C.P.C. is hereby allowed.

Consequently, the plaintiff No.3 is permitted to carryout necessary amendment to the plaint as prayed in the I.A.

For carrying out necessary amendment.

Call on: 11.11.2025.

**SENIOR CIVIL JUDGE & J.M.F.C.,
ARAKALAGUD.**