

Orders on I.A.No.3 filed under Order 6

Rule 17 of CPC

Present application is filed by the plaintiff under order 6 rule 17 of CPC seeking to amend the plaint by adding 3 more properties as item Nos.7 to 10.

2. In the affidavit filed in support of the application, it is contended that the plaintiff has filed the present suit seeking partition and separate possession in respect of the suit properties. At the time of filing the suit, the plaintiff did not know regarding existence of suit item No.7 to 10 properties. Subsequently, after coming to know about the said properties, the plaintiff obtained the necessary documents and filed the present application. It is contended that allowing the present application would not affect the defendants and would not create a new cause of action. If the application is not allowed, the plaintiff would be put to great hardship. Hence, it is prayed that the application be allowed.

3. To this application, the defendants have not filed any objections.

4. Heard arguments.

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

1) Whether the plaintiff has made out sufficient grounds for allowing the said application?

2) What order?

6. My findings on 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:** In this case, it is seen that the plaintiff has filed the present suit seeking the relief of partition and separate possession in respect of the suit schedule properties. According to the plaintiff, the proposed properties are joint family properties and they are amenable to partition. It is seen that no objections have been filed to the present application. Hence, at this stage, it cannot be decided as to whether the said property is a joint family property or not. The same needs trial. Hence, in the absence of any objections by the contesting defendants, there is no impediment to allow the present application. Accordingly, I answer point No.1 in the **Affirmative**.

8. **Point No.2:** In view of reasons assigned above, I proceed to pass the following:

ORDER

I.A.No.3 filed by the plaintiff under order 6 rule 17 of CPC is hereby allowed.

No order as to costs.

For amendment and amended plaint.

(Smt.Anitha G.)
Senior Civil Judge & JMFC,
Arasikere.

ORDERS ON I.A.No.4 FILED UNDER ORDER 1 RULE 10 OF CPC

Present application is filed by the plaintiff seeking to implead proposed defendants in this suit as a defendant Nos.8 to 10.

2. In the affidavit filed in support of the application, it is contended that the plaintiff has filed the present suit seeking partition and separate possession of her share in the suit schedule properties. According to the plaintiff, recently it has come to her knowledge that defendant No.5 and 7 have sold some of the joint family properties to the proposed defendants under registered sale deeds. The said sale deeds are not binding on the plaintiff's share. Hence, according to the plaintiff, the proposed defendants are necessary and proper parties to the suit. Accordingly, it is prayed that the application be allowed.

3. To the said application, the defendant No.10 has filed objections contending that the application is not maintainable either in law or on facts. It is contended that no details have been revealed as to when the proposed 10th defendant purchased the suit schedule property. No details have been given with regard to the sale deed. It is contended that the plaintiff has no right to challenge the sale deed of the proposed defendant No.10 which was executed on 1.9.2005 with regard to 20 guntas in Sy.No.1/3 and 23 guntas in Sy.No.1/6. It is contended that the sale had to be questioned within 12 years from 1.9.2005. Hence, the suit is hit by limitation in this regard. The plaintiff has intentionally not revealed the said fact in the affidavit. The proposed amendment is hit by law of limitation and plaintiff is not entitled to any relief sought under the

application. Accordingly, it is prayed that the application be dismissed.

4. Heard arguments.
5. The points that would arise for my consideration are:
 - 3) Whether the plaintiff has made out sufficient grounds for allowing the said application?
 - 4) What order?
6. My findings on 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:** In this case, a perusal of the plaint shows that plaintiffs have filed the suit for partition and separate possession. It is seen that the affidavit averments are vague and bald. It does not state which are the properties that have been sold and as to when the said properties were sold. Further, it is seen that the date on which the sale came to the knowledge of the plaintiff is also not mentioned in the affidavit. Hence, it is clear that the present application cannot be allowed for want of sufficient material with regard to date of knowledge of sale and actual date of sale to see whether the claim of the plaintiff with regard to proposed properties are within limitation. No grounds are made out to allow the present application. Accordingly, I answer point No.1 in the **Negative**.

8. **Point No.2:** In view of reasons assigned above, I proceed to pass the following:

ORDER

I.A.No.4 filed by the plaintiffs under order 1 rule 10 of CPC is hereby rejected.

No order as to costs.

Call on.,20.12.2023.

**(Smt.Anitha G.)
Senior Civil Judge & JMFC,
Arasikere.**