

ORDER ON IA NO.VI

IA No.VI is filed by respondent No.3 under section 151 of CPC praying to recall the order passed by this court on 08.02.2021 on IA No.V.

Counsel for the petitioner has filed the objection to the said IA.

It is the contention of the 3rd respondent that, the petitioners had filed suit for partition and separate possession in O.S. No.13/2001. That the said suit was decreed on 04.01.2007. That the present petition was filed on 07.11.2016 and the respondent No.3 has appeared before the court. On 09.06.2017 the court commissioner was appointed to demarcate the property as per preliminary decree but the petitioner has not paid commission fee. Thereafter after laps of 1 year i.e., 18.09.2019 the petitioner No.2 Manjula had filed an application under order 1 rule 10(2) of CPC without bringing into the notice of respondent No.3 and since there was lock down due to covid-19 it did not come to the knowledge of respondent. Thereafter the said application was allowed and 2nd petitioner and her sister Dhanalakshmi was impleaded as petitioners in the present case. They have sought to include 18 properties to the schedule which are the self acquired properties of 3rd respondent and his brother. The court has allowed the application only to implead the petitioners not the properties, but the petitioner had filed the amended petition including the properties and the petitioner.

Hence the said application is allowed by mistake in the absence of authorization and commission warrant has been issued to divide all the 18 properties if the commission warrant is executed it will put the respondent in great hardship and injury, hence it is necessary to recall the said order.

The counsel for the petitioners has filed objection to the said application contending that the application is not maintainable either on law or on facts. It is true that the present petition is filed to execute the decree passed in O.S. No.13/2001, it is also true that I.A. under order 1 rule 10(2) is filed on 18.09.2019 but it is false to say that it was filed without bringing into the knowledge of respondent No.3. That IA was filed in the open court and not during the pandemic, but the respondent No.3 has not filed objection to the said IA. That all the 18 properties are the ancestral properties. Hence there is no illegality in allowing the application. Hence prayed to reject the I.A.

Heard and perusal material available on record.

That on perusal of order sheet it is found that the proposed petitioners had filed IA No.V under order 1 Rule 10(2) of CPC on 18.09.2019. Thereafter the case was posted for objection to IA. That on 08.02.2021 the

objection was taken as not filed and IA No.V was allowed permitting the petitioner No.2 and 3 to come on record. Further on perusal of order sheet it is found that the counsel for the petitioner had carried out amendment on 10.02.2021 and filed amended petition on 16.11.2021. That on perusal of IA No.V it is found that the said I.A. is filed under order 1 rule 10(2) of CPC praying to permit petitioner No.2 and 3 to come on record. Even if that IA is allowed it is only with respect to permitting the proposed petitioner No.2 and 3 to come on record, but the petitioners have carried out amendment including 18 properties. That the petitioners had not filed application for amendment of petition. Hence such amendment carried out by the petitioner is illegal and not as per order on IA No.IV.

Hence IA No.V filed by the respondent No.III is hereby partly allowed. The petitioners are directed to file fresh amended petition by only including petitioner No.2 and 3 and not the properties which was allegedly included after the order was passed on IA No.V.

For amended petition by 02.12.2025.

**Addl. Civil Judge and JMFC.,
Beluru.**