

OS 87/2019 Dated 01.10.2022

**ORDERS ON APPLICATION FILED UNDER ORDER 6 RULE 17
OF THE CODE OF CIVIL PROCEDURE**

The present application is filed at the stage of Plaintiff's evidence.

2. The Plaintiff is seeking to amend the plaint by way of an incorporation in the prayer column a relief to the effect that the gift in favour of the 4th Defendant of the 1st suit item on 30.11.2018 does not bind her and it is contended that while she was going through the plaint she realized the omission and that the present application is required to be allowed.

3. The Defendants would contend that suit being of the year 2019 the Plaintiff has slept over in seeking the present relief; that the prayer as sought for now in the year 2022 is barred by time and that the amendment if allowed would change the nature of the suit; that due diligence is not forthcoming on the part of the Plaintiff in filing the present application.

4. Having heard the learned counsel for the parties the points that arise for my consideration are

1. Whether the Plaintiff could be permitted to amend the plaint as sought for?

2. What order?

5. My answer to the aforesaid point is in the *Negative* for the following;

REASONS

6. The suit as has been filed is for the relief of partition and separate possession of the Plaintiff's share in the suit properties. Now the Plaintiff seeks to add a prayer to the effect that the deed of 30.11.2018 does not bind her. The first aspect that needs to be noted is that the Plaintiff is not a party to the said document. Further the main relief in the present suit is for the relief of partition. Therefore the necessity of seeking the additional relief that is now being sought does not survive for consideration. It would be profitable to refer to the judgment of the Hon'ble Apex Court in *Umadevi Nambiar v. Thamarasseri*

Roman Catholic Diocese, reported in (2022) 7 SCC 90 wherein it has been held as under

15. It is not always necessary for a plaintiff in a suit for partition to seek the cancellation of the alienations. There are several reasons behind this principle. One is that the alienees as well as the co-sharer are still entitled to sustain the alienation to the extent of the share of the co-sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner. Therefore, the High Court was wrong in putting against the appellant, her failure to challenge the alienations.

In the event the Plaintiff succeeds in establishing the contention that the suit properties are the joint family properties, de hors the deed of 30.11.2018 the shares would be worked out in the final decree proceedings. In the event the Plaintiff fails to establish her contention of the suit properties being joint family

properties, the deed would remain as it is. Therefore in any event the amendment now sought would not survive for consideration given the scope of the suit and the law as laid down by the Hon'ble Apex Court. Therefore

I Pass the following:

ORDER

The application filed by the Plaintiff under Order 6 Rule 17 of the Code of Civil Procedure is dismissed as not surviving for consideration. Call on 18.10.2022.

(PRAVEEN.R.J.S)
CIVIL JUDGE HOLENARSIPURA.