

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

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

1. The Plaintiff seeks to add additional properties and aver certain facts regarding the same and it is contended that necessary documents were not available at the time of the filing of the suit and as such the present application is being filed.

2. The Defendants have filed objections contending that the application has been filed only with an intention to harass them; that the properties sought to be included are the self acquired properties; that no sufficient grounds have been urged for seeking amendment belatedly; that the properties being self acquired properties and the properties having been given to the wife of the 3rd Defendant are those over which the Plaintiff

cannot claim any share; that the properties of the father-in-law of the Plaintiff have not been added; that the Plaintiff is not entitled to any share in suit item No.6 and 7 and that the proposed amendment is not essential for the adjudication of the present suit and that the Plaintiff also does not have any right over proposed suit items No.8 and 9 and that the Plaintiff and the Defendants have been residing separately for the past 30 years having partitioned their properties.

3. 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?

4. My answer to the aforesaid point is in the *Affirmative* for the following;

REASONS

5. Admittedly this is a suit for partition. In such a suit it is imperative that all parties and all properties are allowed to

participate. The contention of the Defendants that the proposed properties to be added are self acquisitions, over which the Plaintiff has no right, is one that is to be decided by the Court after trial. Without putting the said contention into trial, the Court cannot give its imprimatur that the properties are the self acquisitions of the Defendants on a mere allegation made by them in their objections. Ultimately the burden is on the Plaintiff to prove his case. These properties if not added would not lead to a complete and effective adjudication of the lis. Though the stage is for the evidence of the Plaintiff, fact is, evidence has not yet commenced. Under such circumstances the amendment could be allowed. Further the explanation offered by the Plaintiff for not approaching the Court at an earlier stage can be accepted and the same could qualify as due diligence. Reference in this regard may be had to what the Hon'ble Apex Court has held in the case of *Rajesh Kumar Aggarwal v. K.K. Modi*, reported in (2006) 4 SCC 385, as under:

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of

doing full and complete justice to the parties before the court.

In the light of what the Hon'ble Apex Court has held and the aforementioned facts, I Pass the following:

ORDER

The application filed by the Plaintiff seeking amendment to the plaint is allowed. The Plaintiff shall amend the plaint and file amended plaint on or before 11.10.2022. Call on 11.10.2022.

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