

ORDER ON IA NO. 10

The plaintiffs have filed the present IA No.10 U/o 6 Rule 17 r/w U/sec. 151 of CPC praying for permission to amend the plaint as stated in the application.

2. The defendant No.6 to 10 have filed the objections opposing the IA No.10 filed by the plaintiffs.

3. I have heard the arguments on IA No.10 from both the side and perused the entire case file.

4. Now the points that would arise for my consideration are as follows;

1. Whether the plaintiffs prove that they have made out grounds for allowing the IA No.10 filed U/o 6 Rule 17 r/w U/sec.151 of CPC?

2. What order?

5. My findings to the above points are as follows;

Point No.1 : In the affirmative.

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

REASONS

6. POINT NO.1:- The perusal of the record reveals that the plaintiffs have filed the present suit for the relief of partition and separate possession of their 2/5th share in the suit properties stating that themselves and defendant No.1 to 5 constitute Hindu joint family and suit properties are their joint family properties. It is further reveals that, it is case of the plaintiffs that the defendant No.1 is father of the plaintiffs and he has given the suit properties to the elders of the defendant No.6 to 12 on license only for the purpose of use behind the back of the plaintiffs without their notice, and the elders of the defendant No.6 to 12 have got mutated their names illegally in the revenue records of the suit properties, and now the defendant No.6 to 12 being not related to the family of the plaintiffs are obstructing the peaceful possession and enjoyment of the suit properties by the plaintiffs. It further reveals that the plaintiffs have sought in the suit for the relief of partition and separate possession of their respective shares in the suit properties and for further relief of declaration that the alleged grant of leave or license granted by the defendant No.1 who is father of the plaintiffs in favour of the elders of the defendant No.6 to 12 in respect of suit properties for the purpose of use of the same is not binding on the share of the plaintiffs, and for further relief of declaration that the alienation made by the defendant No.6 to 12 in respect of suit schedule-J property in favour of the defendant No.16 to 19 is not binding on the share of the plaintiffs. It further reveals that the defendant No. 7 has filed written statement opposing the suit of the plaintiffs and defendant No.6, 8 to 10 have adopted the written statement of the defendant No.7. It further reveals that based upon the pleadings of rival parties issues have been

framed by the court and case was posed for recording of evidence. It further reveals that when case was posted for recording of evidence, the plaintiffs have filed the present IA No.10 U/o 6 Rule 17 of CPC seeking permission to amend the plaint by inserting new words as “ceased to exist” after the words defendant No.6 to 12 in prayer column No. 20b, and for insertion of word as “illegal and void” after the words defendant No.16 to 19 in prayer column No. 20c, and for deletion of word “act of” which comes in prayer column No.20c after the words declare that the, and for insertion of a new para No. 20g as “the extent of the suit properties unauthorizedly sold by the defendants be appropriated in the share that may be fallen to the share of respective defendants in the suit”.

7. In IA No.10, it has been stated that the said proposed amendment in the plaint as stated above is very necessary for final adjudication of the matter and if the said amendment is not permitted, the plaintiffs will suffer irreparable injury and on the other hand, no harm or loss will be caused to the defendants. Hence, the plaintiffs have prayed to allow their IA No.10 by permitting them to amend their plaint as prayed in IA No.10.

8. The defendant No.6 to 10 have filed objections opposing the IA No.10 filed by the plaintiffs stating that only in order to postpone or drag the adjudication of the matter, the present IA No.10 has been filed after taking so many adjournments after framing the issues by the court. It is further contended in the objections that since the suit filed by the plaintiffs is being for the relief of the partition and separate possession, and since the proposed amendment is being for the declaratory relief, if the proposed amendment is permitted, then the entire nature of the suit will be changed, and such amendment can not be permitted. It is further contended in the objections that the reliefs which are being sought by way of amendment in the plaint are time barred and such amendment can not be permitted. Hence, ultimately, the defendants have prayed to reject the IA No.10 contending that only with

intention to drag the matter the present IA No.10 has been filed.

9. I have gone through the provision of Order 6 Rule 17 of CPC. As per the provision of Order 6 Rule 17 of CPC, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

10. In the present case, yet no evidence has commenced. Hence, there is no impediment in permitting to the plaintiffs to amend the plaint. Further, it clearly reveals that the amendment which is being proposed is ancillary to the reliefs which already have been sought in the plaint by the plaintiffs. It further reveals that the proposed amendment will not change any nature of the suit and no right accrued to the defendants will be taken away. It further reveals that the proposed amendment is very necessary for the purpose of determining the real questions in controversy between the parties. Therefore, the contention of the defendants that the nature of the suit will be changed if the amendment is permitted, can not be accepted and such contention is not tenable. The plaintiffs have filed the suit for partition and separate possession. But, the plaintiffs in addition to such relief of partition and separate possession, they have sought some reliefs in relation to alleged leave or license granted by the defendant No.1 in respect of the suit properties. Since the plaintiffs are seeking permission to amend the plaint in respect of only with regard to the alleged alienations made by the defendants and in respect of leave or license granted by the defendant No.1 in respect of suit properties, now no new or strange facts are being introduced by the plaintiffs by way of amendment. Hence, I am of the clear view that the proposed amendment is not changing the nature

of the suit and the said amendment is necessary for final adjudication of the real controversy between the parties. Hence, I hold that the plaintiffs have made out grounds for allowing the IA No.10 for amendment of the plaint. At the same time, it appears proper to say that the plaintiffs could have filed the present amendment application at earlier stage, but they have filed the present application at little belated stage. Hence, it appears that for such delay the plaintiffs shall be penalized by way of imposing cost on them. Hence, in view of these observations, I am of the opinion that the IA No.10 is deserve to be allowed. **Hence, I have answered point No.1 in the affirmative.**

11. POINT NO. 2 :- For the reasons assigned on point No. 1 and findings given thereon, I proceed to pass the following.

ORDER

The IA No.10 filed by the plaintiffs U/o 6 Rule 17 r/w U/sec. 151 of CPC is hereby allowed on cost of Rs. 500/- payable by the plaintiffs in favour of the defendant No.6 to 10.

In the result, the plaintiffs are hereby permitted to amend the plaint as prayed in IA No.10 and submit amended plaint.

For amended plaint.

Call on 02-11-2020.

sd/-
Senior Civil Judge & JMFC.,
Byadgi.