

Common order on IA No.21 and 26.

Learned counsel for the plaintiff has filed I.A. No.21 under Order 6 Rule 17 of the Civil Procedure Code, requesting permission to amend the plaint. Additionally, I.A. No.26 has been filed under Order 1 Rule 10 of the Civil Procedure Code, seeking permission to add the opponents/purchasers' of family properties as defendants No.12 to 17 in this case.

2. The affidavits accompanying these applications indicate that this is a suit for partition and separate possession. It has been stated that certain family properties were inadvertently omitted from this suit. The inclusion of these properties is deemed essential. Furthermore, it is asserted that the proposed defendants have acquired properties belonging to the plaintiff's family, thereby making them necessary parties to the proceedings. If, the applications are rejected the plaintiff will be put to hardship. Hence, prayed to allow the applications.

3. Proposed defendants No.12 to 15 and 17 have appeared through learned counsel. Despite service of notice, the proposed defendant No.16 has remained absent.

4. Proposed defendant No.12 has submitted an objection, asserting that the plaintiff was aware of the sale of family properties at the time the suit was filed. It is claimed that the plaintiff has now filed this application with the intent to harass the proposed parties. Additionally, it is contended that she is a bona fide purchaser and in possession of plot No.10 out of R.S. No.31/1+2+3B. There are no valid grounds to allow the applications. Therefore, prayed to dismiss the applications.

5. Proposed defendants No.13 to 15 and 17 have also filed an objection to I.A. No.26, stating that the father of proposed defendants No.14 and 15 acquired plot No.11 on 25.02.1981, while defendant No.17 purchased plot No.12 on 29.03.1982. Proposed defendant No.13 has owned another plot for approximately 30 years. Furthermore, proposed defendant No.17 is the owner of G.P.C. No.702/12/2 and GPC No.702/12/2A of Kodiyala village. The plaintiff lacks any rights over the properties referenced in the application and has filed this application with the purpose of harassing the proposed parties. There are no sufficient grounds to allow the application. Consequently, prayed to dismiss the application.

6. Defendant No.5 has filed objection to the application contending that there are no grounds to allow the application. The application is filed when the case was posted for arguments. The application is filed with an intent to drag the proceedings. Hence, prayed to dismiss the application.

7. I have heard the arguments of learned counsel for the plaintiff and proposed parties. Perused the material placed on record.

8. Points that would arise for my consideration is as under;

1. Whether the proposed parties are necessary parties to this suit?
2. Whether the plaintiff has made out grounds to allow her to amend the plaint?

9. My findings to the above points are in the affirmative for the following;

REASONS

10. This is a suit for partition and separate possession of family properties. It is a case of the plaintiff that suit properties are family properties and herself and defendants No.1 to 9 are tenants in common. Now the plaintiff has filed applications seeking permission to amend the plaint by including other properties as suit properties and to implead purchasers of said properties as defendants of this suit.

11. Proposed defendants No. 12 to 15 and 17 acknowledge that they are the purchasers of properties that belonged to the plaintiff's family. A perusal of the documents reveals that VPC No. 702/10B and 702/10C are registered under the name of defendant No. 4, VPC No. 702/10D is registered under defendant No. 3, VPC No. 702/10E is registered under the plaintiff's name, VPC No. 702/10F is registered under defendant No. 1, VPC No. 702/11 is registered under proposed defendant No. 13, VPC No. 702/11A is registered under proposed defendants No. 14 and 15, VPC No. 702/12/1 is registered under proposed defendant No. 16, and VPC No. 702/13/12 is registered under proposed defendant No. 17.

12. The parties proposed are the transferees of properties that belong to the family of the plaintiff and defendants No. 1 to 9. At this juncture, it is not possible to determine whether these properties are indeed family properties or if the plaintiff has a share in all of them. It requires a trial. As purchasers, the proposed parties are not necessary parties to this suit. Nonetheless, any order made in this case will naturally affect their interests in the properties. Consequently, their presence is necessary for adjudication of

the matter effectually.

13. The plaintiff asserts that the properties intended for inclusion in this suit are also family properties. This being the suit for partition and separate possession, including all the family properties is necessary for the purpose of determining the real question in controversy between the parties. As per the provisions of Order-VI Rule-17 CPC the Court may at any stage of the proceeding allow either party to alter or amend his pleadings. The proposed amendment will not alter the nature of the suit nor will it introduce any new facts. Consequently, the amendment is necessary to resolve the controversy between the parties. Allowing this application will not result in any loss or hardship to the defendants, as it remains the plaintiffs' responsibility to establish that the aforementioned properties are indeed family properties and she is entitled for share in these properties also.

14. A perusal of the sale deed and other documents indicates that proposed defendant No. 12 acquired the property in 1999 and subsequently constructed a house on it. Similarly, proposed defendant No. 17 purchased the property in 1982 and also built a house there. Proposed defendants acquired their respective properties approximately 35 years ago. The plaintiff filed this suit in 2019, and the case is currently at the argument stage. At this juncture, the plaintiff has submitted several applications. The plaintiff's actions suggest a lack of diligence in pursuing the case. Such conduct of plaintiff needs imposition of costs. Nevertheless, in the interest of justice and to prevent the multiplicity of legal proceedings, I find it appropriate to allow the applications. Therefore, I proceed to answer the points under consideration

affirmatively and proceed to pass the following order.

ORDER

IA No.21 filed under Order 6 Rule 17 of CPC,s and I.A. No.26 filed under order 1 Rule 10(2) of CPC are allowed, on cost of Rs.5,000/- each, to be paid to TLSC, Ranebennur.

The plaintiff is permitted to amend the plaint and to implead proposed parties as defendants No.12 to 17 in this suit.

The plaintiff shall carryout amendment and file amended plaint.

Call on : 25-02-2025.

**(Sri. Padmakar Vanakudre)
Addl. Sr. Civil Judge & JMFC,
Ranebennur.**