

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C
SEDAM**

PRESENT: SRI. VIJAYKUMAR S. JATLA
B.Sc., LL.B.
Senior Civil Judge & JMFC, Sedam

DATED THIS THE 13th DAY OF APRIL-2023.

O.S.No.64/2021

Plaintiffs : Santosh and another.

Versus

Defendants : Ayyamma and another.

**Common Orders on I.A.No-III U/o 6 Rule 17 of CPC and IA
No.IV U/O 7 Rule 14(3) of CPC filed by Plaintiffs**

These two interlocutory applications are filed by the plaintiffs seeking permission to amend the plaint as per proposed amendment and also seeking permission to file the list of documents.

2. The proposed amendment is that ;

1. Para 7A and 7B be inserted after para 7 of the plaint as under:

7A. Since the suit land Sy.No.24 of Sangavi(T) is ancestral and joint family property and the defendant No.1 is not the absolute owner and possessor of the land, therefore the Gift deed executed by defendant No.1 in favour of defendant No.2 and 3 vide document No.661/2021-22 dated 20.7.2021 is null and void and not binding on the rights of the plaintiffs. The plaintiffs came to know about the

Gift Deed on 5.9.2021 when the defendant No.1 to 3 refused to give share and disclosed about gift deed.

7B. "The plaintiffs father was working as Contractor and out of his own income he purchased land Sy.No.19/1 measuring 4 acres 00 guntas and Sy.No.82/5 to the extent of 1 acre 24 guntas out of total land measuring 3 acres 23 guntas both situated at Sangavi(T) village, Tq: Sedam and they are his self acquired property and the defendants are not concerned to those lands".

2. Para ia be inserted after para 10(i) as under:

ia) "The relief of declaration that the Gift Deed document NO.661/2021-22 dated 20.7.2021 is null and void and not binding on the rights of the plaintiffs is valued at Rs.1000/- and paid court fee of Rs.25/- U/s.24(d) of K.C.F. and S.V.Act".

3. In prayer column para 1A be inserted after para 1 as under:

1A. "A decree be passed declaring the Gift Deed document No.661/2021-22 dated 20.7.2021 is null and void and not binding on the rights of the plaintiffs".

3. Advocate for plaintiffs contended that due to lack of advise, relief of declaration regarding gift deed is not sought earlier. Now while preparing chief examination it is noticed that the Gift deed has been pleaded in the plaint but not challenged. Inadvertently the properties purchased by the plaintiffs father is not disclosed in the plaint and the defendants have claimed them to be joint families in

their written statement. Therefore, it is necessary to bring on record the actual fact of self acquisition by father of plaintiff NO.1 by pleading the same. Necessary relief and payment of court fee and prayer column relief are necessary. The proposed amendment is required to decide the case on merit finally. If the amendment is allowed, no prejudice will be caused to other side. If the amendment is not allowed, it will lead to filing of another suit. It is further contended that the plaintiffs are filing document under a cover list of documents. The documents now filed is gift deed executed by defendant No.1 in favour of defendant No.2 and 3. The same is required to prove the case of plaintiffs. The same is obtained recently from the Sub-Registrar office Sedam and being filed. The documents sought to be filed are public documents. If they are allowed to be filed, no harm will be caused to the defendants. Hence, sought for allowing IA No.III and IV.

4. The defendants have not filed any objections to IA No.III and IV.

5. On the basis of the above pleadings and on hearing advocate for plaintiffs, the following points arise for my consideration.

- 1) Whether the plaintiffs have made out grounds to allow I.A.No.III U/o 6 Rule 17 of CPC and IA No.IV U/O 7 Rule 14(3) of CPC?

2) What order?

6. My findings on the above points are as under:

Point No:1 : In the Affirmative.

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

REASONS

7. **Point No.1:-** The case of the plaintiffs is as discussed above.

This is a suit for partition and Separate possession in respect of suit schedule properties against the defendants. This application is filed by the plaintiffs for proposed amendment of plaint. Advocate for plaintiffs contended that due to lack of advise, relief of declaration regarding gift deed is not sought earlier. Now while preparing chief examination it is noticed that the Gift deed has been pleaded in the plaint but not challenged. It is further contended that inadvertently the properties purchased by the plaintiffs father is not disclosed in the plaint and the defendants have claimed them to be joint families in their written statement. The proposed amendment is very much essential for proper adjudication of the matter and plaintiffs also filed IA No.IV U/O 7 Rule 14(3) of CPC praying this court to permit them to file list of documents. It is contended that the documents now filed is gift deed executed by defendant No.1 in favour of defendant No.2 and 3 and same is required to prove the case of plaintiffs. The documents sought to be filed are public documents.

8. On perusal of the IA No.III and IV and plaint it is seen that the plaintiffs filed suit for partition and separate possession against the defendants. The present applications are filed before commencement of evidence and it is the burden on the plaintiffs to prove the case in hand with proper pleadings and prayer. The proposed amendment will not change the nature of suit and it is essential for proper adjudication of dispute. If the amendment is not allowed the plaintiffs are deprived of put forth their case properly and leads to multiplicity of the proceedings. If the applications are allowed no harm or injury will be caused to the defendants. For proper adjudication of the controversy between the parties, it is just and necessary to allow the proposed amendment and permit the plaintiffs to file relevant documents. The plaintiffs made out the valid and justifiable grounds to allow I.A No.III U/o 6 Rule 17 of CPC and IA No.IV U/O 7 Rule 14(3) of CPC. In the light of above reasons I answer Point No.1 in the Affirmative.

9. Point No.2:- As I have answered point No. 1 in the Affirmative for the foregoing reasons, I proceed to pass the following:

ORDER

IA-III Under order 6 Rule 17 of CPC filed by
the plaintiffs is hereby allowed with not cost.

Further plaintiffs are directed to amend the
plaint as per proposed amendment in I.A.No.III.

IA.No.IV Under Order 7 Rule 14(3) of CPC
filed by the plaintiffs is hereby allowed with no
cost.

Document produced by the plaintiffs is
taken on record.

(Dictated to the Stenographer directly on computer and corrected, signed and then
pronounced by me, in the open Court on this the **13th Day of April-2023**, at Sedam)

Senior Civil Judge & JMFC,
Sedam.