

IN THE COURT OF THE SENIOR CIVIL JUDGE SEDAM

PRESENT: SRI. VIJAYKUMAR S. JATLA

**B.Sc., LL.B.
Senior Civil Judge, Sedam**

DATED THIS THE 11th DAY OF NOVEMBER-2020.

O.S.No.79/2018

Plaintiff : Eshawamma and others.

Versus

Defendants : Chennamma and others.

Order on I.A.No-VI U/o 6 Rule 17 of CPC filed by defendants

This is an interlocutory application is filed by the defendants seeking amendment of written statement.

2. The proposed amendment is that ;

“The plaintiff No.4 by name Sumitra was given in second marriage. That after the marriage they said sumitra was received Rs.10,00,000/- towards her share. The out of said amount Rs.5,00,000/- deposited in bank and remaining balance of Rs.5,00,000/- was given in cash. Therefore plaintiff No.4 has no share in the suit property. Therefore plaintiff No.4 has no share in the suit property. Therefore plaintiff No.4 is not necessary party and suit of plaintiff is not maintainable as mis-joinder of parties therefore suit is not maintainable and it is liable to be dismissed.

3. It is respectfully submitted that family had owned land Sy.No.154 measuring 4 acres 24 guntas out of total measuring 13 acres 33 guntas situated at village Adki. That plaintiffs are intentionally has not included in the suit properties. Therefore suit of the plaintiff is also not maintainable as non-joinder of entire family properties. Therefore also suit of the plaintiff's is liable to be dismissed”.

4. Advocate for defendants contended that at para No.4 plaint contain due to oversight it was state that I was worked in railway department due to oversight this fact was wrongly mentioned but he was actually worked as block programme officer BAIF Institute. Therefore this fact to come to know the defendant No.2 only when himself and his counsel preparing for cross examination of PW.1 therefore this fact could not stated at the time of filing written statement. Further contended that due to oversight it was not mentioned at plaintiff No.4 was given in 2nd marriage. In 2nd marriage defendant No.2's father was given Ten lakh towards her share. It is further contended that out of Ten lakh and amount of Rs.500,000/- deposited in bank account and remaining amount of Rs 5,00,000/- was given in cash. Therefore she has no share. This fact was also not mentioned in written statement. It was further contended that plaintiff was not included Sy. No.154 measuring 4 acres 24 guntas out of total land measuring 13 acres 33 guntas,

situated at village Adki. This land is also ancestral property of parties of the suit. Further submitted that this land was given to plaintiff No.2. Therefore the plaintiff No.2 also having no share in the suit property. These facts came to know to the defendant when his advocate preparing for cross examination of PW.1. The proposed amendment is very much necessary to decide the matter. Hence, this application for proposed amendment.

5. Per contra, the plaintiff contended that the new plea taken saying that Rs.10,00,000/- is paid without any substance. The same is false. It is false to say that plaintiff No.4 has married for the 2nd time. The plaintiff No.4 is given to person who already married and his wife had died. So when the plaintiff No.4 refused marry person who already married and his wife had died, in order pacify her as security for her life by father of the plaintiff No.4 had deposited Rs.5,00,000/- and after three years of her marriage and her settlement in life returned the same to her father. The plaintiff No.2's husband died, then plaintiff No.2 received service benefits and she purchased the land Sy. No.154 measuring 4 acres 24 gunta but due to wrong advise stating that she has no land therefore nominally sale deed is got executed in the name of her father and later soon got transferred in the name of plaintiff No.2. The said land is not concerned to the joint family. The defendant No.2 in order to

delay the proceedings of the case has filed this application the same is false. Hence, sought for dismissal of the application.

6. On the basis of the above pleadings and on hearing both sides, the following points arise for my consideration.

- 1) Whether the defendants have made out grounds to allow I.A.No.VI respectively?
- 2) What order?

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

Point No:1 : In the Affirmative.

Point No.4: As per final order for the following:

REASONS

8. Point No.1:- The case of the plaintiff and defendants as discussed above. This is a suit for partition and separate possession in respect of suit schedule properties against the defendants. This applications is filed by defendants for amendment of written statement when the matter posted for cross examination of PW.1.

9. Advocate for defendants contended that the propose amendment is very much essential for proper adjudication of the matter as the defendant failed to put forth of his defence properly at the time of filing written statement. Further contended that the defendants came to know the omission of facts in the written statement when the matter is posted for cross examination of PW.1,

which is not intentional one and it will not change nature of the suit. Already father of defendants has given Rs.10,00,000/- to the plaintiff No.4 and she is not entitled for share and also Sy.No.154 measuring 4 acres 24 guntas situated at Adki village is not included in the plaint which is also ancestral property and same is given to plaintiff No.2 hence, plaintiff No.2 is not entitled for share under these circumstances present proposed amendment is very much essential for effective adjudication of the matter, Hence sought for allowing the application as prayed for.

10. Advocate for plaintiff contended that the present amendment is not required as there are no reasonable grounds to allow the share. The property which is standing in the name of plaintiff No.2 is made nominally through sale-deed in the name of father of plaintiff and thereafter transferred in the name of plaintiff No.2. Further contended that the said property is not joint family property hence sought for dismissal of the application.

11. On perusal of the IA No.VI and objections it is seen that the plaintiffs filed suit for partition and separate possession against the defendants. The proposed amendment which is sought by the defendants is came to know at the time when the matter is posted for cross examination of PW.1. 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 defendants are deprived of put forth their defence properly and leads to multiplicity of proceedings. The defendants made out the valid and justifiable grounds to allow I.A No.VI U/o 6 Rule 17 of CPC. In the light of above reasons I answer Point No.1 in the Affirmative.

12. 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-VI Under order 6 Rule 17 of CPC filed by
the defendants is allowed.

(Dictated to the directly on computer and corrected by him and then pronounced by me, in the open Court on this the **11th day of November-2020**, at Sedam)

Senior Civil Judge,
Sedam.