

ORDERS ON I.A.NO - 13

The Counsel for the plaintiff has filed I.A.13 U/O 6 Rule 17 of C.P.C and prays for permission to amend the plaint as prayed in the application.

2. In annexed affidavit plaintiff has stated that he has filed present suit for Partition and Separate Possession. At the time of filing of this suit he has not include some of the ancestral properties due to non availability of documents. The said properties are also joint family properties of himself and defendants. The said properties are also not divided by metes and bonds between the family members of the plaintiff. Due to bonafide reason he could not able to include all the joint family properties as on date of suit. The proposed amendment not changes the nature of the suit. This proposed amendment is very much necessary for fair adjudication of the case. If this application is allowed no hardship would cause to the defendants. If this application is not allowed much hardship would cause him. Hence, he prays for allow the application.

3. Per contra, the defendant No.3 and 4 have filed his detailed objection and contended that plaintiff has sworn false affidavit in support of his application. The plaintiff in his cross examination has admitted the alienation made by him. The

plaintiff without including said properties, he has filed present application to add other properties. Hence, the plaintiff has no locus-standi to include the proposed properties into the present suit in belated stage. Plaintiff has not made out grounds to allow the application. Hence, prays for dismiss the application.

4. Heard arguments.

5. Peruse the pleadings of the parties and materials available on record.

6. The following points would arise for consideration

1. Whether the plaintiff shows that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and further shows that in spite of his due diligence he could not raised the matter before the commencement of the trial?

2. What Order?

7. My findings on the above point No. 1 in **affirmative** for the following reasons.

REASONS

8. **Point No.1:** The plaintiff has filed present suit against the defendants for partition and separate possession.

9. The plaintiff in annexed affidavit submits that proposed item No.27 and 28 properties are the ancestral properties and due to non-availability of documents he could not able to

include the said properties to the suit in earlier stage. On the other hand defendant No.3 and 4 has contended that plaintiff fails to include all the joint family properties, which are alienated him. Hence, prays for dismiss the application.

10. The question is whether proposed schedule properties are the joint family properties and suit is barred by non inclusion of all the joint family properties or not is subject matter of trial. Because to give findings on the above said contention full pledged trial is required. It is settled principle that whoever desires any court to give judgment as to any right on the existence of the fact, must prove the those facts is existence, in the instant case plaintiff has stated that proposed properties are ancestral properties, as such burden lies on him to prove the facts that said properties are ancestral properties with cogent materials. On perusal of the entire pleadings of the plaintiff and proposed amendment is not created new cause of action and not changes the nature of the suit and not causes injustice to the other side and proposed amendment is very much necessary for the purpose of determining the real question in controversy between the parties. Therefore, plaintiff has made out grounds to allow the application. Hence, the court answers point No.1 in the **Affirmative**.

11. **Point No.2:** As per above said discussion Court proceeds to pass the following;

ORDER

I.A No.13 filed by the plaintiff is hereby allowed with cost of Rs.300/-.

Plaintiff is hereby permitted to amend the plaint as per proposed amendment as prayed in the application.

Plaintiff is hereby directed to furnish amended plaint within 10 days from the date of this order.

To carry out the plaint and to file amended plaint by 05.12.2025.

I Addl. Sr.Civil Judge & JMFC,
K.R.Pete.