

ORDERS ON I.A.NO.20

This is an application filed by the plaintiff seeking the amendment of the plaint as per the proposed schedule.

2. The application is supported with the affidavit of the plaintiff. In his affidavit, he has stated that the plaintiff has filed the present suit for the relief of partition and separate possession in respect of the suit schedule properties. It is stated that the suit schedule properties are all ancestral and joint family properties of the plaintiff and the defendants No.1 to 6. The defendant No.5 is the elder brother of this plaintiff and he is the manager of the joint family. The suit schedule properties have been purchased in the name of the defendant No.5 and the said defendant No.5 by taking advantage of the properties stood in his name and in anticipation of filing the present suit, has created sale deed of the suit schedule item No.22 in favour of the defendant No.9 on 22.05.2012 and said defendant No.9 again created another sale deed in favour of the defendant No.10 on 30.11.2012. Further, the defendant No.5 has created another sale deed in favour of the defendant No.11 in respect of the suit item No.20. It is stated that the aforesaid defendants have already been made as parties in the present suit. Since, the said aspects were not pleaded in the plaint, it is just and necessary to add those facts in the plaint. It is stated that these facts have to be narrated in the plaint and in view of this, the present amendment is sought. It is stated that the proposed amendment will not change the nature of the suit or it will not leads to new cause of action. Hence, it is prayed to allow the application.

3. On the other hand, the learned counsel for the defendant No.3, 5 and 6 have filed the objections to the application and denied all the contention taken in the application. The allegation regarding the nature of the suit schedule properties, which are said to be ancestral and joint family properties are all denied by the defendants. The contention of the plaintiff regarding the manager of the joint family i.e., the defendant No.5 and some of the suit schedule properties were purchased in his name are all specifically denied. It is stated that an amendment is highly belated one and on this ground alone the amendment application is liable to be dismissed. By stating all these grounds, it is prayed for dismissal of the application with costs.

4. Heard the arguments on both the sides.

5. The following points would arise for my consideration:-

1) Whether the plaintiff has made out grounds to allow the application and thereby permit him to amend the plaint as prayed in the I.A.?

2) What order?

6. My findings to the above said points are as follows:-

Point No.1 :- In the **affirmative.**

Point No.2 :- As per final order,

for the following :-

REASONS

7. **Point No.1** :- This is a suit filed by the plaintiff seeking the relief of partition and separate possession in respect of the

suit properties. It is specifically stated that the suit schedule properties are all ancestral and joint family properties of the plaintiff and the defendants. During the proceedings of the present suit, the plaintiff has filed the I.A.No.14 and 16 and thereby impleaded some of the defendants in the present suit on the ground that they have purchased the suit schedule properties from the defendant No.5. On these grounds, the Court has impleaded those defendants as necessary parties in the present suit. In the light of the allowing of the said application, the present application has been filed by the plaintiff on the ground that there is a need to aver the facts in the present suit about the purchase of the suit schedule properties by the aforesaid defendants. Infact, the applications to implead those defendants were filed on 19.11.2012 and 25.03.2013 and those applications were allowed. After allowing the said applications, the present application has been filed by the plaintiff at a highly belated stage, i.e, after framing the issues and when the case was posted for the plaintiff's side evidence. Infact, the plaintiff has taken much time in leading the evidence and has come up with the present application.

8. It is true that there is a need to bring all the facts pertaining to the suit schedule properties in order to adjudicate the case on hand effectively and judiciously. Moreover, the object of the amending the pleadings is also that the Court has to see that the entire controversies between the parties are effectively determined. In my view whatever the contention raised by the plaintiff regarding the alleged purchase of the suit schedule properties by the defendants No.9 to 11 is very much

necessary for the present suit and the same will enable this Court to adjudicate the entire controversies between the parties. In view of this, the amendment sought by the plaintiff is deserves to be allowed. But, by keeping in view of the delay of more than 2 years caused by the plaintiff in seeking such amendment and as the plaintiff has filed the present application after framing of the issues and when the case was posted for the evidence on plaintiff's side, the application is highly belated one. In view of this, in order to compensate the same, the Court has to allow the application by imposing heavy costs on the plaintiff. Hence, I answer this point in the **affirmative**.

9. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that the application filed by the plaintiff is deserves to be allowed. However, by keeping in view of the delay caused in filing the application, the application is deserved to be allowed with heavy costs. Hence, I proceed to pass the following:-

ORDER

The application filed U/o.6 Rule 17 r/w Sec.151 of CPC filed by the plaintiff is hereby allowed subject to payment of costs of Rs.500/-.

The plaintiff is hereby permitted to amend the plaint as prayed for.

Call on for payment of costs, amendment of the plaint and to submit the amended plaint by:- **21.10.2016**.

Senior Civil Judge,
Maddur.