

**ORDERS ON I.A.NO.23**

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

2. The application is supported with the affidavit of the plaintiff. In his affidavit, the plaintiff has stated that in Para No.5 and 5(a) of his plaint, he has clearly stated that the defendant No.5 being the manager of the joint family has illegally created the documents to gain illegally himself and to cause illegal loss to other family members has created the documents as if, he has sold and he has purchased in the name of the close relatives. It is submitted that this plaintiff has also filed an application to implead the parties also. It is submitted that the schedule properties are intended to be included in the schedule as they are purchased by the defendant No.5 in the name of his close relatives by investing joint family funds. Thus, the properties are the properties of the joint family. It is submitted that this plaintiff has also got interest and share in these properties. Hence, it is prayed to allow the application.

3. On the other hand, the learned counsel for the defendants No.5 and 6 has filed his statement of objections. It is submitted by these defendants No.5 and 6 that the application is not maintainable either in law or on facts. It is submitted that the plaintiff has sworn to a false affidavit and the allegations made in the said affidavit are not at all true. It is submitted that the

allegations made in the affidavit are all specifically denied. It is submitted that the plaintiff has already led his evidence and he has filed this false and frivolous application to dodge the matter. It is submitted that under the amended provisions of CPC, the plaintiff cannot be permitted to amend the plaint after the commencement of the evidence. It is further submitted that the amendment sought for will alters the nature of the case and cause of action. Hence, the same cannot be allowed. The amendment sought for highly prejudices the case of these defendants. The amendment sought for is highly belated one and hence, cannot be allowed. By stating these grounds, it is prayed for dismissal of the application.

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 **negative**.

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. The plaintiff has clearly narrated about the relationship between himself and the defendants No.1 to 6. Thereafter, the other defendants were impleaded in the suit by stating that they are the purchasers of the some of the suit schedule properties. The defendants have entered their appearance and contested the matter by filing the written statement. After framing the issues, when the case was posted for evidence on the plaintiff's side, the plaintiff himself examined as the PW.1. When the case was posted for cross-examination of the PW.1, the present application has been filed. Infact, already this plaintiff had filed an application U/o.6 Rule 17 of CPC on 08.12.2015 and before that, he had impleaded several defendants by filing the I.A.No.14 and 16. The said application in I.A.20 U/o.6 Rule 17 of CPC came to be allowed by this Court and thereafter, the plaintiff has amended the plaint. After that, the present application has been filed on the ground that the defendant No.5 being the manager of the joint family has illegally created the documents in the name of his close relatives out of the joint family funds and he has shown the transactions that he has purchased the properties through his relatives and sold them on behalf of the relatives. In view of this, there is a need to add those properties in the present suit. Further, the plaintiff has also sought to add some averments relating to a criminal case wherein

a cash amount of Rs.3,00,000/- was said to be lent in favour of Sri. Puttaramegowda by receiving a cheque and the same has been shown as one of the item of B schedule.

8. In order to show that the properties which are shown in the proposed amendment are the joint family properties and they have been purchased by the defendant No.5 being the Manager of the joint family absolutely, no prima facie materials are placed on record by the plaintiffs. Except filing this application and mentioning the particulars of the properties, absolutely, no such materials are placed on record by the plaintiff to show that the said properties are belongs to the present defendant No.5 and he has acquired the same in the name of his close relatives by investing the joint family funds. Though, the copies of the sale deed dtd:24.05.2012, 22.05.2013, 26.02.2013 and 23.12.2013 are placed on record, they are not showing any such recitals to substantiate the contention that the properties which are shown in the application schedule are belong to the joint family and they have been acquired out of the joint family funds by the defendant No.5 by investing the joint family funds.

9. It is evident that the plaintiff is intending to add the parties, whose names are mentioned in the aforesaid sale deeds. But, in my opinion as there is absence of prima facie materials to believe that the said properties were acquired out of the joint family funds, I find no grounds in the present application. Moreover, simply on the ground that the purchasers of the said

properties are the close relatives of this defendant No.5, that does not amount to show that the properties are purchased out of the joint family funds in the name of close relatives by this defendant No.5. It is to be noted that the plaintiff had filed the application on 08.12.2015 itself and sought the amendment of the plaint which came to be allowed. But, the plaintiff has not stated what prevented him to bring the said facts in the said I.A.No.20 itself by laying foundation in respect of those properties. No cogent reasons are assigned to show that there are prima facie materials to show that the said properties are acquired out of the joint family funds by this defendant No.5 in the names of his close relatives. Under these circumstances, I find no grounds in the contention of the plaintiff. Hence, the application is liable to be dismissed. Accordingly, I answer this point in the **negative**.

10. **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 liable to be dismissed. Keeping in view of the stage at which the present application has been filed, the application is liable to be dismissed with heavy costs. Hence, I proceed to pass the following:-

**ORDER**

The application U/o.6 Rule 17 of CPC  
filed by the plaintiff is hereby dismissed  
with costs of Rs.500/-.

Senior Civil Judge,

Maddur.

**ORDERS ON I.A.NO.24**

This is an application filed by the plaintiff seeking an order to add the proposed defendants No.5 and 6 in the present suit.

2. The application is supported with the affidavit of the plaintiff. In his affidavit, the plaintiff has stated that he has filed an application U/o.6 Rule 17 of CPC to add two properties purchased by the two persons who are mentioned in the present application to be impleaded as the defendants. The said two persons are the son-in-law of the defendant No.5 and another one is the mother of the said son-in-law. This defendant No.5 being the manager of the joint family of the plaintiff and the defendants as illegally and behind the back of the plaintiff and other family members has invested Rs.21.00 lakhs out of the joint family income derived from the joint family in the name of his wife Prabhavathi and got the agreement of sale on 24.05.2012 to purchase 0.05 guntas of sital property before filing the suit. This plaintiff has filed the suit for partition on 01.06.2012. As soon as the defendant No.5 came to know the fact of filing the suit for partition, he got changed the agreement of sale in favour of Smt. Jayarathamma, the mother of his son-in-law. Because, she is the resident of Ramanagara District and the site is situated nearby the dwelling house of the defendant No.5, the defendant No.5 has obtained the agreement of sale in the name of Smt. Jayarathamma on 22.05.2013 and later on, he obtained the sale

deed in her name on 26.12.2013. Further, he had also invested the joint family amount to purchase the sital property in the name of his son-in-law Sathish Kumar on 23.12.2013. The said agreement of sale and the sale deeds are produced by the plaintiff. It is submitted that this plaintiff came to know these facts very recently and by obtaining the documents there of, he has filed these applications. It is also submitted that in Para 5 and 5(a) of the plaint, the plaintiff said to have stated about how, the defendant No.5 has created false document to mis-utilize the joint family property and funds. In view of this, the aforesaid persons are to be impleaded as the defendants in the present suit. It is submitted that this case has been posted for cross-examination of the PW.1 and in the meanwhile, the defendant No.5 filed an I.A. to amend the written statement. Now, this plaintiff came to know about the defendant No.5 that he has also created some documents in the name of his close relative. Hence, he has come up with the present application and it is prayed to allow the same.

3. After filing this application, this Court had issued the notices to the proposed defendant. Thus, the proposed defendants have entered their appearance before this Court and filed their statement of objections by denying all the allegations made against them. It is submitted that no allegations are made in the plaint with regard to the alleged transactions and nothing has been cited against the proposed defendants. Absolutely, no relief is sought for against the proposed defendants and no relief is sought for to avoid the sale deed taken by the proposed

defendants. It is submitted that the presence of the proposed defendants is not at all necessary to decide the case on hand. Hence, these proposed defendants are neither necessary nor proper parties in the present suit. It is further submitted that the proposed defendant by name Satish Kumar is a Software Engineer and he is drawing a salary more than Rs.1,00,000/- at the time of purchase of the site property. The proposed defendant Satish Kumar had handsome salary and he has the capacity to purchase the said property out of his own income and it is his self acquired property and his site cannot be included in the present suit schedule. The defendant No.5 has not spent or invested even a rupee for the purchase of the site property. No materials are shown as regard to investment of the defendant No.5 in purchasing the said property. It is further submitted that the proposed defendant Smt. Jayarathamma is an agriculturist and her husband was also an agriculturist. It is submitted that out of the family income, she has purchased a site property and that site is her self acquired property. She is not a family member of the plaintiff family, only because of the relationship, she cannot be impleaded as a party. Unless it is prima facie shown that out of the joint family income, the same was purchased, she cannot be impleaded in the present suit. By stating these grounds, it is prayed for dismissal of the application.

4. Heard the arguments on both the sides.

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

3) Whether the plaintiff has made out grounds to allow the application and thereby to implead the proposed defendants as the defendants in the present suit?

4) What order?

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

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

Point No.2 :- As per final order,

for the following :-

### **REASONS**

7. **Point No.1** :- The present suit has been filed by the plaintiff seeking the relief of partition and separate possession in respect of the suit properties. The plaintiff has clearly narrated about his relationship with the defendants in the present suit. The case was proceeded and already the evidence on the plaintiff's side was led and now, the case is posted for cross of PW.1. At this juncture, the plaintiff has come up with an application U/o.6 Rule 17 of CPC, as well as this application by seeking the amendment in the plaint by inserting the proposed amendment as well as to implead the proposed defendants in the present suit.

8. By looking in to the contention taken by the plaintiff, it is very clear that the proposed defendant by name Smt.

Jayarathnamma is said to be the mother of the son-in-law of the defendant No.5, who said to have purchased a site situated nearby the dwelling house of the defendant No.5. It is the allegation made by the plaintiff that the said proposed defendant No.12 is a close relative of the defendant No.5 and a such, this defendant No.5 has obtained the sale agreement previously in the name of his wife and later after coming to know about the filing of the suit, he entered an agreement in the name of Smt. Jayarathnamma on 22.05.2013 and later on, he obtained the sale deed thereof in her name on 26.12.2013. This contention clearly show that the said transactions were held after filing of the present suit. Absolutely, the document which has been produced by the present plaintiff to show the aforesaid transaction does not reveal the aforesaid facts as contended by the plaintiff. Further, it is also contended by the present plaintiff that the proposed defendant No.13 is none other than the son-in-law of the plaintiff and this defendants No.5 said to have invested the joint family funds in purchasing the site property in the name of his son-in-law i.e., the proposed defendant No.13 on 23.12.2013. This transaction is also said to be held after filing the present suit. In this regard, on going through the alleged copy of the sale deed dtd:23.12.2013, which is said to be executed in favour of the proposed defendant No.13, it is very clear that the said property has been purchased by him and there are no recitals in the said deed that the defendant No.5 has invested the amount in purchasing the said properties. Whatever the contention raised by

the plaintiff in order to implead is only based upon the ground that the above said transactions are the benami transactions entered into by the defendant No.5 in the name of the proposed defendants by investing the so called joint family funds. But, by looking in to the aforesaid documents, it is very clear that no such materials are placed on record to show that the joint family funds were invested in purchasing the site properties. Infact, it is not the case of the plaintiff that the defendant No.5 had retained the joint family funds with him, in order to invest the same in the name of his son-in-law as well as the mother of the son-in-law. Moreover, in a suit a proper party is one, whose presence is required to adjudicate the case on hand effectually and completely and the necessary party is one, without whom no order can be passed effectively. But, in the case on hand, no such reasons are found and shown by the plaintiff to believe that these proposed defendants are either the proper or the necessary parties in the present suit. By looking in to these circumstances, it is very clear that the Court cannot add those parties as the proper or necessary parties in the present suit. Further, if the said purchased properties are added definitely, the rights of those proposed defendants will be curtailed and deprived. Under these circumstances, I am of the opinion that these proposed defendants are neither the proper nor the necessary parties in the present suit. Hence, I answer this point in the **negative**.

9. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that the proposed

defendants are neither the proper nor the necessary parties in the present suit. Hence, the application filed by the plaintiff is liable to be dismissed. Accordingly, I proceed to pass the following:-

**ORDER**

The application U/o.1 Rule 10(2) r/w Sec.151 of CPC filed by the plaintiff is hereby dismissed with a cost of Rs.500/-.

Senior Civil Judge,  
Maddur.