

COMMON ORDERS ON IA No.10 and 12

IA No.10 and 12 are filed by the plaintiff under Order VI Rule 17 of CPC seeking amendment of plaint.

2. In the affidavit filed to IA No.10, it is stated that at the time of filing suit, 3 properties are left out and it is came to the knowledge of the plaintiff recently, when she verified suit schedule properties after posting the case for cross-examination. Therefore she proposes to include three properties to the suit schedule. The proposed properties are ancestral and joint family properties and the plaintiff has got share in the said properties. In the affidavit filed to IA No.12, it is stated that at the time of filing suit, boundaries to the suit schedule properties are not described. The same is noticed by the plaintiff after engaging the present counsel. Therefore, the plaintiff filed IA No.10 to include properties to the suit schedule and IA No.12 to describe boundaries to the suit schedule Item No.1 to 60 properties.

4. The defendant No.6, 10 and 12 have filed their separate objections to both applications and stated that the present suit is filed in the year 2021. The plaintiff has already given her evidence. After lapse of 4 years, she has filed this false and vexatious application to include the self-acquired properties of defendant No.6. The defendants in their written statement have taken defence about earlier partition. They have narrated the pattern of partition taken place long back. There is no joint family.

The question of impleading the proposed properties does not arise. Landed property in Survey No.23/3 is sold in favour of one Sushmita Beeji, wife of V.V.R. Sagar through registered sale deed dated 09.04.2021. That property cannot be included in the suit unless the purchaser is impleaded in the suit. The defendants have filed their written statement contending that suit is not maintainable for not furnishing boundary description to the suit schedule properties. In spite of it, the plaintiff has not mentioned boundary description to the suit schedule properties. Now she has filed application to describe boundaries of the suit properties on imagination. She has not produced supporting documents to show the correct and actual boundaries. The plaintiff has filed above applications after commencement of trial. Therefore, as per proviso to Order VI Rule 17 of CPC, she has to show her due diligence in filing the application seeking amendment. The plaintiff has not assigned any such reasons about due diligence. Therefore, it is prayed to reject both applications.

5. Heard and perused.

6. The point that arises for my consideration is as follows ;

Whether the plaintiff has made out sufficient grounds to permit her to amend the plaint as sought for?

7. My answer to the above point is in the ***Affirmative*** for the following;

REASONS

8. The present suit is filed by female legal heir for partition in the year 2021. In the affidavit filed to the IA No.10, it is stated that at the time of filing suit, proposed three properties are left out. The said properties are also ancestral and joint firm properties and the plaintiff has got share in the said properties. The defendant No.6 in the objections filed IA No.10 stated that the proposed properties are his self-acquired properties. Whether the intended properties are ancestral properties or self-occurred properties of defendant No.6 is a matter of trial. In order to decide the said fact, it is just and necessary to permit the plaintiff to amend the plaint by including those properties.

9. The plaintiff through IA No.12 is seeking permission to describe boundaries of suit Schedule Item No.1 to 60 properties. In the affidavit filed to the application, it is stated that at the time of filing suit, boundaries are not mentioned and it has come to the knowledge of the plaintiff recently when she engaged the present counsel. In the objections filed to the application, it is stated that the suit is not maintainable for not furnishing boundary description to suit schedule properties. In suit for partition and separate possession, it cannot be said that suit is not maintainable for not mentioning boundaries to the

properties. Therefore, the contentions taken by the defendants for rejecting above applications are not tenable.

10. The above applications are filed after commencement of trial. The plaintiff is examined as PW1 and the case is pending for further cross-examination of PW1. In the affidavits filed to the application, it is stated that the plaintiff recently came to know about the properties intended to be included are not included in the plaint and description of sure schedule Item No.1 to 60 properties are not mentioned. Therefore, the said reason is sufficient to show that in spite of her due diligence, she could not file application for amendment. Moreover, in order to adjudicate the dispute on merits, it is just and necessary to allow the plaintiff to amend her plaint as sought for. In suit for partition all properties shall be included and there is no provision for partial partition before the court. Therefore this court is of the considered view that the above applications have to be allowed. Accordingly, the above point is answered in the ***Affirmative***. Hence, this court proceeds to pass the following:

ORDER

IA No.10 and 12 filed under
Section under Order VI Rule 17 of
CPC are hereby allowed.

The plaintiff is permitted to amend the plaint as sought for.

For amendment and for amended plaint. Call on 16.07.2026

**(MOHANAKUMARI N.B.)
I-Addl. Senior Civil Judge & JMFC.,
Maddur.**