

COMMON ORDERS ON IA Nos.6 & 7

These are the two applications filed by the applicant/plaintiff No.1 U/O.1 Rule 10 r/w Sec.151 of CPC as I.A.No.6 praying an order to implead a person by name Smt. Nagamma W/o. Chikkaraguegowda as a defendant No.5 in this suit and an application U/O.6 Rule 17 r/w Sec.151 of CPC as I.A.No.7 seeking permission to amend the plaint by adding the proposed property as item No.13 of the suit schedule property, in the interest of justice and equity.

2. These two applications are supported with the sworn affidavits of the plaintiff No.1 wherein he has stated that he along with other plaintiffs have filed this suit against the defendants seeking the relief of partition and separation possession over the suit schedule properties. It is further submitted that the present suit is now posted for their side of evidence and while discussing with his counsel regarding the evidence, he come to know that another property bearing Sy.No.175/3 measuring 0.08 guntas situated at Kunturu Village, Malavalli Taluk was not included in the present suit and it is their ancestral property. It is further submitted that the husband of the proposed defendant Nagamma as Chikkaraguegowda and his grand father's name is also called as Raguegowda S/o. Chikkaraguegowda, the said Chikkaraguegowda is the father of the grand father of the

applicant. Such being the facts, the proposed defendant has advised before the revenue officials and making his all ancestral properties in her name illegally. In this regard, he came to notice that on MR No.15/2007-08 the above proposed defendants has transfered his ancestral and joint family properties in favour of his mother. It is further submitted that his mother has preferred a petition under RRTCR No.21/2014-15 against the proposed defendants before the Tahsildar, Malavalli and the said Tahsildar has cancelled the khatha made in the name of the proposed defendant Nagamma on 21.10.2015, but the revenue officials have not cancelled the khatha of the property. Hence, he has also got share of the proposed property and therefore, he has filed these applications for impleading the present property and proposed defendant. Hence, prays to allow these applications.

3. Meantime, this Court issued notice to the proposed defendant No.5 in I.A.No.6 and it was duly served to her on 30.06.2016 but, she failed to appear before this Court.

4. On the other hand, the defendant No.1 has filed his consolidated objection to both I.A.No.6 and 7 and contended that these applications are not maintainable either in law or on facts and the same are liable to be dismissed in limine. It is further submitted that these affidavits are false and incorrect, have no merits in order to harass the defendants

and to make unnecessary delay. There is no necessary of impleading a person nor amendment of including property and if the proposed amendment carried out it will change the nature of the suit and also alter the cause of action. Hence, it is prayed for rejection of these applications with exemplary costs.

5. Heard both the sides and perused the documents.

6. Now the points that arise for my consideration are:

1) Whether the applicant has made out grounds to allow I.A.No.6 and 7 as prayed for?

2) What order?

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

Point No.1 - In the Affirmative.

Point No.2 - As per final order

for the following:

-: REASONS :-

8. **POINTS No.1 & 2**:- Since, these points are interconnected to each other they are taken together in order to avoid the repetition of facts.

9. Perused the entire records, instant applications with affidavits and objections filed by the parties and also arguments canvassed by the learned advocates for the parties.

Admittedly, the plaintiff has filed the present suit for the relief of partition and separate possession with respect to suit schedule properties and when the matter was stood for cross of PW.1, the present applications came to be filed by the plaintiffs and opposed by the defendants.

10. It is to be noted that as per **Order 1 Rule 10(2) of CPC**, *The Court may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just order that the name of any party improperly joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added.* Further it is settled principle of law that it is for the plaintiff in a suit to identify the parties against whom he has any grievance and to implead them as defendants in the suit filed for necessary reliefs. In this case already notice has been issued to the proposed defendant and the same was served to her but, failed to appear before this Court and placed as *ex parte*. The defendants not filed the objection to I.A.No.14. Moreover, the defendant No.1 has filed objections stating that it will change the nature of the suit.

11. In the present case, the plaintiffs intends to add proposed item No.13 in the present case. It is to be noted that Hon'ble High Court of Karnataka in **2019(3) KCCR 2159-SMT.PUTTALINGAMMA V/s KALINGAIAH AND OTHERS** - it is held that *'In a suit for partition wherein the plaintiff is admitting that after death of her father her name and name of her sister were entered in the revenue records-That they have received compensation for acquisition of subject land for public purpose-Plaintiff also failing to include other properties of her father-held that dismissal of suit proper.'* The ratio held in the said decision aptly applicable to the present case as non-adding of all the joint family properties results dismissal of the suit.

12. It is settled principle of law that in a partition suit all the joint family properties has to be included. The burden heavily lies on the plaintiff to prove the said aspects. In the present case, already issues framed on 11.02.2015 wherein the issue No.2 was framed with regard to proving of suit schedule property as joint family properties. Further it is important thing to note that, **Order 6 Rule 17 of CPC** clearly states that : *"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such*

amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Further the proviso stated the no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial”.

13. Further in a reported decision in **2020(4) KCCR 2626-SANGAVVA KALADAGI AND OTHERS V/s SHANTAWWA SAJJAN AND ANOTHER:** Order 6 Rule 17 of CPC, Amendment of plaint-suit for partition-application to add some properties was filed when the matter stood for defense evidence, allowed by the Trial Court was challenged. It is held that it is settled law that in a suit for partition shall include all the properties which are available for partition. Upheld the order of Trial Court. Further held that in a suit for partition any time the properties could be included. Even at the stage of final decree proceedings also the properties could be included for the purpose of partition. The ratio held in the said decision is aptly applicable to the present case.

14. Further, the plaintiff is the author of his case. The property is joint family property or self-acquired property has to be known in the full pledged trial. At this stage, the Court

can't determine the same. The question as to whether an individual is a proper or necessary party to a suit would depend upon the nature of relief claimed in the suit. There is no hard and fast rule can be weighed, that would cover a possible situation in this regard. On considering all these facts and circumstances of the case, in order to avoid legal consequence, it is proper to implead the proposed defendant as defendant No.5. So, in order to adjudicate the dispute on hand and to avoid multiplicity of proceedings, it is proper to implead the proposed defendant and proposed property to this suit as sought for. The necessary party is one in whose absence no effective decree can be passed.

15. In view of my discussions above, I am of the opinion that the proposed defendant No.5 is necessary party to the present litigation and proposed property has to be included as Item No.13 of the suit property. In view of the foregoing discussions, without impleading the proposed defendant No.5, no effective decree can be passed in this matter. Hence, I answer the **Point No.1 and 2 in the Affirmative.**

16. **Point No.3:** As per my above discussion in Points No.1 and 2, I proceed to pass the following:

ORDER

The application filed by the plaintiffs U/O.1 Rule 10 r/w Sec.151 of CPC as I.A.No.6 are hereby allowed on total cost of Rs.150/-.

The application filed by the plaintiffs under Order 6 Rule 17 r/w Sec.151 of CPC as IA No.7 is hereby allowed in part with a cost of Rs.150/-.

The plaintiffs are permitted to amend the plaint schedule by adding the item No.13.

In the result, the plaintiffs are hereby directed to implead the proposed defendant as defendant No.5.

Call on for cost, amendment and to submit the amended plaint by:-

***(Shemida.K)
Prl. Civil Judge and JMFC,
Malavalli.***