

**ORDERS ON I.A.**

This is the application filed by the applicant/ plaintiff under order 6 rule 17 r/w sec.151 of C.P.C seeking an amendment of plaint as mentioned in the application.

2. In the affidavit annexed to the application the applicant/ plaintiff submitted that the defendant No. 1 to 6 and 12 are the children born on at the 2<sup>nd</sup> marriage of his grand father, thus they having no right in the suit schedule property. The suit schedule property is the ancestral property of plaintiff and defendant No.7 to 10 and 11. Due to the illiteracy and lack of knowledge the plaintiff has not inserted the said fact in the plaint earlier. As such it is necessary to amend his plaint. The amendment sought will not create a

new set of fact and not change the cause of action. Hence, prays to allow the application.

3. On the other hand, the defendant No.1(b) filed objection on behalf of himself and by the defendant No.2 to 6 on IA and contended that the plaintiff filed this application at the fag end of the case is not maintainable. The amendment sought will change the nature of the suit. The proposed amendment touches the right and liberty of the defendants. Hence, prays to dismiss the application.

4. Considering the contentions of the respective counsels, the following point arises for my consideration:

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in

controversy between the parties?

5. Having heard the arguments of both the counsels and considering the entire materials available on record, I answer the above point in the '**Affirmative**' for the following;

**R E A S O N S**

6. The suit of the plaintiff is for partition and separate possession. The plaintiff taken a contention that the defendant No. 1 to 6 and 12 are the children of 2<sup>nd</sup> wife of their grand father and born out of void marriage, thus they are not having right in the suit schedule property. On the other hand the defendants have not disputed the said fact in their objections. However the contention taken by the plaintiff is a material fact which is necessary to determine the real

question in controversy between the parties.

8. As per Order 6 rule 17 of CPC 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. Provided that no applications 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.

9. In the case on hand, the plaintiff come up with this application when case is posted for argument with no sufficient ground.

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However, to avoid multiplicity of proceedings IA is to be allowed in the interest of justice. As such no prejudice will cause to the defendant if application is allowed. Thus for all these reasons I.A. is liable to be allowed in the interest of justice.

10. Hence, I answer the above point in the affirmative and proceed to pass the following;

**O R D E R**

I.A. filed by the applicant/plaintiff Under Order 6 rule 17 r/w Sec.151 of C.P.C. is hereby allowed on cost of Rs.1,000/-.

Sd/-

**JUDGE,**

Addl. Court of Small Causes,  
Mysuru.

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Call to carried out  
amendment and to furnish amended  
plaint on 07.12.2024.

Sd/-  
Judge,  
Court of Addl. S.C., &  
Mysuru