

Order on I.A.No.XII

The present application I.A.No.XII is filed by the plaintiffs U/O 6 Rule 17 of CPC praying for an order to permit them to to carryout amendment as stated in the application.

2. The said application is supported by the affidavit of the plaintiff No.1 and it is sworn that the plaintiffs have filed suit against defendants for the relief of partition and separate possession. When the suit was filed, the plaintiffs have not included the properties mentioned in the application. It is also sworn that the said properties are also joint family properties and since there were no documents available in respect of present properties, the plaintiffs could not include those properties in the present suit. If the application is not allowed, the plaintiff would be put to irreparable loss and hardship. Hence prayed to allow the application.

3. The counsel for defendant No.2 to 9 have filed objection to the application and it is stated that the plaintiff has not produced documents in respect of the property stated in the application and further he has not stated that how the said properties are ancestral joint family properties. It is also stated that even though the plaintiffs were aware about said properties, they intentionally not included the properties in the present suit. It is further stated that when the case is adjourned for arguments at belated stage the plaintiffs have filed present application. Hence prayed to dismiss the application with cost.

4. Heard the arguments of counsel for both parties.

5. The points that arise for consideration of this court are as under:

Point No.1. Whether the plaintiffs have made out sufficient grounds to permit them carryout amendment which is necessary of disposal of the suit?

Point No.2. What Order?

6. The findings of this court on above points are as under:

Point No.1 :-In Affirmative

Point No.2 :- As per final order for the following;

REASONS

Point No.1:

7. The plaintiffs have filed present application to permit them to carryout amendment by including the properties stated therein. It is stated in the affidavit accompanying to the application that when the suit was filed, the plaintiffs were not aware about the properties now intended to included in the plaint schedule. The plaintiffs have filed present suit for partition and it is settled principle of law that all the joint family properties should be included in a partition suit. The contesting defendants themselves raised the defence that the properties now stated in the application are not included in the suit and therefore the suit is bad for partial partition. Now the plaintiffs have filed present application to include the said properties to the present suit. The plaintiffs have also produced the documents in respect of said properties. Since the suit is filed for partition, in order to determine the rights of the parties over

said properties, the same should be included in the plaint schedule. The delay and inconvenience caused to the defendants could be compensated by imposing cost. The plaintiffs by swearing the affidavit has made out sufficient grounds to consider the present application. Hence for the said reasons, this court answers Point No.1 in Affirmative.

Point No 2:

9. For the reasons discussed above, this court proceeds to pass the following:

O R D E R

The application I.A.No.XII filed U/O 6 Rule 17 of CPC filed by the plaintiffs is hereby allowed with cost of Rs.300/-.

The plaintiffs are hereby permitted to carryout the amendment as stated in the application.

For amendment and amended plaint.

Call on: 18.01.2025.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 16th day of January, 2025)

**(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote**