

### **Order on I.A.No. VII**

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

2. The said application is supported by the affidavit of the plaintiff No.2 and it is stated that, the plaintiffs have filed suit against defendants for the relief of partition and separate possession. The properties stated in the proposed amendment are the ancestral and joint family properties of plaintiffs and defendants. The plaintiffs got share over said properties but the said properties are not included in the present suit. It is also stated that the defendant No.4 to 6 have sold the properties situated at Kanchamahalli Village in favour of defendant No.8 and the said Sale Deed dated 28.01.2016 is not binding on the shares of the plaintiffs. It is further sworn that the plaintiffs could not plead the said fact when they filed the suit since they did not get the particulars and documents relating to said transactions. It is also sworn that the proposed amendment will not change the nature of the suit or it will cause any loss or hardship to the defendants. Hence prayed to allow the application.

3. The defendants have not filed objection to the application.

4. Heard the arguments of counsel for both parties.

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

## **P O I N T S**

**Point No.1.** Whether the plaintiffs have made out sufficient grounds that the proposed amendment is very much necessary for the proper adjudication of the dispute between the parties?

**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;**

## **R E A S O N S**

### **Point No.1:**

7. The plaintiffs have filed present application to permit them to carryout amendment to the plaint as stated in the application. On careful perusal of the proposed amendment, the plaintiffs intends to add some properties to the plaint schedule and also intends to plead that the Sale Deed executed by defendant No.1, 4 to 6 in favour of defendant No.8 dated 28.01.2016 is not binding on the shares of the plaintiffs. The plaintiff No.2 by swearing affidavit has stated that the plaintiffs did not get the documents relating to said transaction and also the documents relating to other properties which are to be included in the plaint schedule. On perusal of the order sheet, the present application is filed when the case is adjourned for cross examination of PW-1. The plaintiffs have filed the present suit for partition and separate possession. It is settled principle of law that in a suit for partition all the joint family properties should be included. The plaintiffs in order show the existence of

the properties stated in the proposed amendment, they have produced the documents before the court. By considering the said documents, it is necessary to permit the plaintiffs to include the said properties in the schedule in order to determine the joint nature of said properties. The proposed amendment will not change the nature of suit or it will create any new cause of action. Therefore by considering reasons stated in the application the same deserves to be allowed. Hence for the said reasons, this court answers Point No.1 in Affirmative.

**Point No 2:**

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

**ORDER**

**The application I.A.No.VII filed U/O 6 Rule 17 of CPC filed by the plaintiffs is hereby allowed.**

**The plaintiffs are hereby permitted to carryout the proposed amendment to the plaint.**

**No order as to cost.**

**For amendment and amended plaint.**

**Call on: 28.05.2024**

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 22<sup>nd</sup> day of April, 2024)

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