

ORDER ON IA No.VII

The plaintiff has filed I.A.No.VII under Order 6 Rule 17 R/w Section 151 of Code of Civil Procedure for seeking permission to amend the plaint by inserting one more property in the schedule of the plaint.

2. In the affidavit, which enclosed to I.A.No.VII, wherein she has stated that the plaintiff has filed the suit against the defendants for the relief of partition and separate possession with respect to the schedule properties. Further, the defendant No.7 and 8 have converted the land bearing Sy.No.350/1 into non-agricultural purpose and formed layout and sold the property in site No.6 in the said layout to one Smt. Asharani under registered sale deed dated 07.07.2018. The said fact has not been stated in the plaint at the time of the filing of the suit. Further the said property is also joint family property of plaintiff's family. Therefore, prays for allow the application.

3. On the other hand, the defendants have not filed objection to the application.

4. On the basis of the pleadings, the following points arise for my consideration;

1. Whether the plaintiff has made out ground that, the proposed amendment is to be necessary for the purpose of determining the real question in controversy between the parties?
2. What order?

5. Heard counsel appearing for the plaintiff. Perused the entire records and documents available and my findings on the above points are answered as follows:

Point No.1 : In the Affirmative

Point No.2 : As per final order

for the following;

REASONS

6. **Point No.1:-** The plaintiff has filed a suit against the defendants for the relief of partition and separate possession. On the other hand, the defendants have

appeared before this court and filed written statement by denying the case of the plaintiff.

7. On the basis of rival claimants of the parties, this court framed issued and case posted for plaintiff's evidence. When case posted for cross examination of PW-1, the present application was filed.

8. Now the question arise before this court is, whether the amendment is necessary for the determination of the real question in controversy between the parties. Before discussion of the above point, this court glance the provision under Order 6 Rule 17 of Code of Civil Procedure. Hence, it is relevant to mention under **Order 6 Rule 17 of Code of Civil Procedure;**

9. Rule 17 provides for amendment of pleading it reads under;

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 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.”

10. The said provision makes it clear that, at any stage of the pleadings allow the either party to alter or amend his pleadings. If the proposed amendment to be necessary for the purpose of determining the real question in controversy between the parties.

11. On perusal of the plaint and application, the plaintiff intended to add one more property in the schedule and also adding prayer column pertaining to the sale transaction took place between defendant No.7 and 8 and Smt.Asharani. Further the record shows that the trial was not yet been commenced. Therefore, the proposed amendment is very necessary to adjudicate the matter effectively.

12. Further, the plaintiff cannot withdrawn any admissions. It is settled law that the grant of application for amendment shall be subject to certain conditions namely, 1) when the nature of it is changed by permitting amendment 2) when the amendment would result in introducing new cause of action and intends to prejudice the other party and when allowing amendment applications defeats the law of limitation. The proposed amendment does not change the nature of the suit or cause of action and there is no defeats of the limitation in the amendment application.

13. If the proposed amendment is not allowed, the defendants have got right to make file additional written statement and to adduce evidence to disprove the case of the plaintiff. To avoid the multiplicity of proceedings, the proposed amendment is allowed. **Hence, this court answered Point No.1 is in the Affirmative.**

14. **Point No.2:-** In view of the discussions and conclusion arrived at Point No.1, this court proceed to pass the following;

::ORDER::

❖ The I.A.No.VII filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of C.P.C. is hereby ***allowed***.

❖ The plaintiff is permitted to carryout the amendment and furnish the amended plaint within 14 days from the date of this order.

For amendment of plaint.

Call on: 04.03.2025.

**Senior Civil Judge & JMFC.,
K.R.Nagar.**