

**ORDER ON IA No.XIV**

The plaintiffs have filed I.A.No.XIV 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 para regarding execution of gift deed with respect to the item No.2 of the plaint schedule.

2. In the affidavit, which enclosed to I.A.No.XIV, wherein the plaintiffs have stated that the plaintiffs have filed the suit against the defendants for the relief of partition and separate possession with respect to the schedule properties. Further, the defendant No.1 and 2 have transferred the property in item No.2 and 3 by way of gift deed and sale deed as per Ex.P7. Further stated that, the 2<sup>nd</sup> defendant had executed gift deed in favour of defendant No.4 and the said gift deed is not binding on rights of plaintiffs over the schedule property. The proposed amendment is very necessary to

adjudicate the matter. Therefore, prays for allow the application.

3. On the other hand, the defendant filed objection and contending that, the application filed by the plaintiffs is not maintainable and the plaintiffs have not questioned the gift deed within time. Hence, prays for reject the application.

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

1. Whether the plaintiffs have 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 plaintiffs have 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 plaintiffs.

7. On the basis of rival claimants of the parties, this court framed issues and case posted for plaintiff's evidence. When case posted for cross examination of DW-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 plaintiffs intended to add one more para with respect to the execution of the gift deed by the defendant No.2 in favour of defendant No.4 on

03.12.2021 with respect to item No.2 of the schedule property. On the other hand, the defendants contended that the plaintiffs not questioned the said gift deed within time. At this stage it cannot be say that whether the present application is in time or not. It require full pledged trial.

12. Further, the plaintiffs 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 plaintiffs. 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.XIV filed by the plaintiffs under Order 6 Rule 17 R/w Section 151 of C.P.C. is hereby **allowed**.

❖ The plaintiffs are 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: 10.03.2025.

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