

ORDER ON IA No.XII

The plaintiff No.1 has filed I.A.No.XII under Order 6 Rule 17 R/w Section 151 of Code of Civil Procedure and seeking permission to amend the plaint by inserting two more properties in the schedule.

2. In the affidavit which enclosed to I.A.No.XII wherein she has stated that the plaintiffs have filed the suit against the defendants for the relief of partition and separate possession with respect to the suit schedule properties. The proposed item No.11 and 12 properties are the ancestral properties of plaintiffs and defendants. The defendants have sold the proposed item No.11 and 12 properties in favour of Yogesha and Kengegowda under registered sale deed dated 17.08.2005 and 28.01.2002 respectively without the knowledge of the plaintiffs. The said fact is came to the knowledge of plaintiffs recently and the plaintiffs have also got share over the said properties. Hence, she 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 No.1 has made out ground that, the proposed amendment 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 plaintiffs. 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 with respect to the suit schedule properties. On the other hand, the defendants have appeared before this

court. But, the defendant No.1, 5 and 7 have filed written statement by denying the case of the plaintiffs. As per the affidavit, the plaintiffs have stated that the proposed amendment properties are also joint family properties. Hence, she has intended to include those properties in the schedule.

7. Now the question arises 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;**

8. 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.”

9. 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.

10. The plaintiff has stated that the proposed item No.11 and 12 are also joint family properties and the said properties are not included at the time of filing the suit. The plaintiffs have got share over the said properties.

11. 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.

12. If the proposed amendment is 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.**

13. **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.XII filed by the plaintiff No.1 under Order 6 Rule 17 R/w Section 151 of C.P.C. is hereby ***allowed.***

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