

ORDERS ON I.A.No.VII

The plaintiff has filed I.A.No.VII under Order 6 Rule 17 of Code of Civil Procedure and seeking permission to amend the plaint by inserting one more para at 8(a) and prayer column.

2. In the affidavit, which enclosed to I.A.No.VII, wherein he has stated that she filed a suit against the defendants for the relief of partition and separate possession. One Kamamma who is second wife of her father had executed registered will dated 19.03.2010 with respect to the ancestral property, the said Kamamma has no right to execute the alleged will with respect to the ancestral properties. Therefore, the proposed amendment is very necessary to adjudicate the matter effectively. Accordingly, prays for allow the application.

3. On the other hand, the defendant No.7 filed objection to the application. In the objection it is stated that, the application filed by the plaintiff is not maintainable both in law and facts. Further it is stated that,

during lifetime of Ramegowda she had purchased the some properties. Therefore, she had executed will dated 19.03.2010. The properties covered under the will not joint family properties of the plaintiff as stated in the accompanying application and affidavit. Therefore, prays for reject 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 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 and defendants. 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:-** It I noticed from the pleadings of the parties that, the plaintiff filed a suit against the defendant for the relief of partition and separate possession. On the other hand the defendants have appeared before this court and filed written statement. On the basis of rival claimants of the parties, this court framed issues and when the case posted for plaintiff's evidence, the present application was filed.

7. 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;**

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 be necessary for the purpose of determining the real question in controversy between the parties.

10. It is well settled that, all amendments ought to have been allowed which satisfy the true conditions one of not working in justice to other side and second one of being necessary for the purpose of determining the real questions in controversy between the parties.

11. In the instant case, the plaintiff filed the suit for partition and separate possession with respect to the schedule properties.

12. Further the plaintiff stated that, the Kamamma have no right to execute the will as stated in the application. According to

plaintiff, the properties covered under the will are also joint family properties of both plaintiff and defendants. On the other hand, the defendant No.7 contended that, the properties covered under the will are the self acquired properties of Kamamma. At this stage, this cannot possible decide whether the properties covered under the will are the self acquired properties of Kamamma or not.

13. Further, it is noticed that, the plaintiff cannot withdrawn any admissions in the pleadings. 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.

14. If proposed amendment is allowed, the defendant No.7 has got right to make file 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 in the Affirmative.**

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

::ORDER::

The I.A.No.VII filed by plaintiff under order 6 rule 17 of C.P.C. is hereby ***allowed***.

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

For amendment plaint.

Call on: 21.12.2023.

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