

ORDERS ON I.A.No.III

The plaintiff has filed I.A.No.III under Order 6 Rule 17 R/w Section 151 of Code of Civil Procedure and seeking permission to amend the plaint in order to insert one more property in the plaint.

2. In the affidavit, which enclosed to I.A.No.III wherein she has stated that she has filed the suit against the defendants for the relief of partition and separate possession. When case posted for plaintiff's evidence, the present application was filed by incorporating the facts that, the proposed amendment property is also joint family property of parties to the suit. At the time of presenting the plaint, she unable to get the documents with respect to the proposed amendment property. Therefore, the proposed amendment is very necessary to decide the real contrivers between the parties. If the application is allowed, it will not change the nature of case or cause of action and

no hardship or injury would be caused to other side. If the application is not allowed, she will put to great loss and hardship. Hence, she prays for allow the application.

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

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. 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 defendant No.1 and 2 have not appeared before this court. Hence, they have been placed exapрте. However, the defendant No.3 was appeared before this court and he failed to file written statement and when case posted for plaintiff's evidence, the present application was filed in order to insert one more property in the plaint schedule.

7. Now the question arise before this court is, whether the amendment is necessary for 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. In the instant case, the plaintiff has filed the suit for partition and separate possession. On the other hand, the defendants have not filed written statement. The plaintiff has seeking

amendment by inserting the one more property. According to plaintiff, the proposed amendment property belongs to father of defendant No.3 which is also joint family property. The plaintiff having share over the said property. On the other hand, the defendants have not filed objection to the application.

11. Further, it is noticed that the plaintiff cannot withdrawn any admissions from the previous 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.

12. If the proposed amendment is not allowed, the defendants have 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.**

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.III filed by the plaintiff under Order 6 Rule 17 of R/w Section 151 of C.P.C. is hereby ***allowed***.

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

For plaintiff's evidence.

Call on: 15.11.2024.

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