

ORDER ON I.A. 11 FILED U/O 6 R-17 OF C.P.C.

The present application has been invoked and presented before this court seeking and obsecration for the amendment and alteration of the pleadings of the plaint by way of insertions and incorporation the properties that were mentioned and stated in the application.

2. The applicant/plaintiff filed his affidavit submitting before this court that, the applicant through his affidavit sworn before this court he is patronage and craving before this court to advert that, the item No.7 to 9 are the properties which are made mentioned in the present instant application, wherein the said properties were left, without impleading, intercalating and incorporating those properties in the schedule which is furnished along with the plaint. The reasons and the grounds for the non inclusion of the said properties are due to paucity, lack, deficit and scanty of the documents available during the installation and presentation of the suit. The said properties were not made, depicted and shown as the schedule properties in the schedule annexed along with the plaint. These properties are also the properties of the constructive joint and undivided properties of the plaintiff and defendants. Where the plaintiff along with the defendants having dues and they are entitled for their respective shares in respect of the properties which are sought for amended. Hence, these properties in order to decide the

suit effectively and to conclusively determine the real disputes and ambiguities between the parties and to settle and adjudicate upon the entire and integral dispute between the parties, it is absolutely necessary for the applicant/plaintiff herein to incorporate insert and to alter the schedule annexed along with the plaint. Hence, the application is craving invoking and importunate before this court through this application for necessary rectification.

3. Further retreating, conflicting and disputing the said application of the plaintiff herein. Resisting and challenging the said contemplation, the statement of objections has also been came to be filed by the defendants herein. Wherein from the recitals, contents and postulation of the said objections it would takes us to note and it is also indicate that, the suit which is preferred by the plaintiff is initially for the relief of partition and separate possession. Therefore, the suit is of the year 2016 and till date the plaintiff herein has not produced any piece of paper or documents in order to establish and to ratify the additional properties mentioned in the amendment are also the properties of the entire family. Therefore, in the absence, scarcity, deficiency and inadequacy in the documents so as to prove and to arrive definite conclusion with the properties are the ancestral and also the integral constructive mixed properties of the plaintiff and defendants, the present application has been moved and came to be filed by the

applicant herein, only to dodge and it is a trick which is played by the plaintiff herein and to cause delay and to procrastinate linger and expel the proceedings of the suit. Hence, prays for dismissal of the suit imposing cost.

4. Heard and perused.

5. The following points arise for this court's consideration.

1) Whether applicant has made out sufficient grounds for allowing the present application?

2) What Order?

6. This court findings on the above points for consideration are as under:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following:

REASONS

7. POINT NO.1:

The present application and averments made in the application, the properties which are presented through this application, item No.7 to 9 of the indexed and disclosed properties are the entire family properties of the plaintiff and defendants, where the schedule properties is due and the plaintiff has also owing and entitled for his respective legitimate share and right over the schedule properties which

were left out and not included due to the shortage paucity and insufficiency in the availability of the documents which are available presently and these properties which are presented in the form of application are also placing the part and parcel of the entire family which attains significance and the plaintiff is also having the shares on these properties.

8. However, according to the defendants, emanating and immune the pleadings they are patronage the pleadings of the statement of objections that, there is no recitals, documents or any sort of materials and papers where it could be indicated and shown before this court that, these properties which are imprecated and placed before this court are the family properties, where the plaintiff and defendants would seek the share effecting in the schedule properties. Further according to the defendants, as of now, so as to evince decide and to authenticate that, these properties are also the properties of the family, there are no documents or substantial piece of materials are forth furnished and presented before this court. Further in the absence of any ratification and collective integral piece of documents, the intensity being the application is maintained and preferred is a sole motive to expel and lingering the proceedings of the suit without there being any logical end. Therefore in order to curb and to restrict the such an intensity, purport and object, the application is to be dismissed and hence sought for dismissal of the application.

9. At this juncture on vetting the provision of order 6 rule 17 of C.P.C. as envisaged under the code is to facilitate and enable the parties to the suit to amend their pleadings. Further whenever any such applications are moved for seeking amendment of their respective pleadings, the court may allow either party to amend their pleadings in such a manner and on such terms that all such amendments if they are necessary for the purpose of determining the real controversies between the parties. However this court may allow and consider those applications which are filed for amendment at any stage of the proceedings.

10. Moreover by simplicitor permitting the applicant for amendment of his pleadings that itself does not convey or create any right on the persons in respect of pleadings but the amendments that are made out by way of alteration or by way of incorporation even otherwise by way of amendment. Rather whenever the amendments are permitted, it is the applicant who has to prove their pleadings and they are under the obligation to prove their pleadings by providing with suitable evidence in support of their pleadings. As such, whenever the said application is made out for amendment of the pleadings, the said application if denied and not permitted, the very purpose and purport of the act does not serve and achieve the inception of the very provisions. Accordingly, these kind of the

applications must not be considered sparingly, pedantic and two inexorable.

11. Therefore, whenever such application are come across before this court, rather to view such application with strick sense, on the contrary if those applications are not allowed and amendment is denied and disallowed, in that event, even if the applicant succeeded in this suit, he would go by and rendered remediless and it may also leads to curtailing and obliterating their part of legal obligations. Further in the opinion of this court no prejudice would be caused in favour of the plaintiff, if the amendment application is allowed and hence for the reasons discussed above, the said application is hereby liable to allowed. Hence, this court without further discussion proceeds to answer **point No.1 in the affirmative.**

12. POINT NO.2:

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

ORDER

The I.A. No.11 filed by plaintiff under order 6 rule 17 of C.P.C. is hereby **allowed.**

Accordingly the applicant is permitted to amend his pleadings of plaint as prayed in the application and he is also directed to furnish

the fresh amended plaint and also to carry out the amendment of the plaint.

For amendment and amended plaint.

Call on: 15.04.2025.

(Chandan S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.