

**COMMON ORDER ON I.A. NO.3 FILED BY THE
PLAINTIFF UNDER ORDER 6 RULE 17 R/W 151 OF
CPC AND IA No.5 FILED BY THE PLAINTIFF UNDER
ORDER 1 RULE 10(2) R/W 151 OF CPC**

The application No.3 is filed by the plaintiff under order 6 Rule 17 R/w 151 of CPC by praying for permission to amend the plaint by adding the pleadings as pleaded in the IA.

2. The another application No.5 is filed by the plaintiff under order 1 Rule 10 R/w 151 of CPC by praying to implead the person mentioned in the schedule of IA No.5 as defendant no.10.

3. The IA No.3 was filed by the plaintiff herein by seeking amendment of the plaint by stating that the defendant No.1 has created the false agreement to sale dated 30.03.2023 after filing of the present suit only to deprive the right of the plaintiff without receiving any consideration. The defendant No.1 has no individual right to sell the said property. The proposed amendment is necessary to implead the said pleadings in this regard. Hence, filed the present application by praying for permission to amend the plaint for the proper adjudication of case.

4. In the affidavit annexed with the IA No.5 it is stated on oath that the defendant No.1 by colluding with the proposed defendant No.10 has created the false agreement to sale dated 30.03.2023 after filing of the present suit only to deprive the right of the plaintiff without receiving any consideration. The defendant

No.1 has no individual right to sell the said property. The said agreement to sale deed is not binding on the plaintiff. The proposed defendant No.10 who is the purchaser of the said property is proper and necessary party. Hence, filed the present application by praying to implead the proposed defendant no.10 for the proper adjudication of case.

5. Upon filing of IA No.5 the notice on IA No.5 was issued to the proposed defendant no.10. The proposed defendant no.10 appeared through counsel and not filed any objections to IA No.5.

6. The defendant No.1, 3 to 7 filed common objections to IA No.3 and 5.

7. In the objection the defendant No.1, 3 to 7 submitted that the application filed by the plaintiff is not maintainable either law or on facts of the case. Hence, same is liable to be dismissed. Further, submitted that the defendants already filed the written statement and contended that some of the properties are not included in the suit. Without adding those properties the present application is filed only to drag the proceedings. Hence, prays to reject the applications.

8. Heard the arguments.

9. Perused the documents.

10. The points that arise for my consideration is:

- 1) Whether the plaintiff made out grounds by showing that the proposed defendant no.10 is proper and necessary party for the effective adjudication of the

present case?

2) Whether the plaintiff made out grounds by showing that the proposed amendment is necessary for the effective adjudication of the present case?

3) Whether the plaintiff has made out sufficient grounds to allow I.A. No.3 and 5 as prayed in the I.A.?

11. My finding on the above points are in the **Affirmative** for the following reasons.

REASONS

12. **Point No. 1 to 3** :- As these points are inter connected with each other they are taken together for common discussion to avoid the repetition of facts. The present suit is filed for the relief of partition and separate possession. The plaintiff contents that the property which is agreed to sell to the proposed defendant No.10 is the joint family property which is standing in the name of defendant No.1. The present suit was filed on 21.03.2023. In the mean time on 30.03.2023 the defendant No.1 executed sale agreement infavour of proposed defendant No.10.

13. The instant suit is one filed for the relief of partition and separate possession and allot the plaintiff share in the plaint schedule properties. Through these applications the proposed defendant No.10 sought to impleaded and necessary amendment to plead that the property agreed to purchase by the proposed defendant No.10 is also a joint family property.

14. The first and foremost aspect to be considered while analyzing O.1 R.10(2) of CPC application is that

whether the party moving an application is proper and necessary party in this suit. Reverting back to the factual matrix, it is contended by the plaintiff that the proposed defendant No.10 is a necessary party as the property agreed to purchase by him is a joint family property. On meticulous scrutiny of above said contentions, at this prima facie stage reveals that the proposed defendant No.10 need to be impleaded for the proper adjudication of the case to consider two points firstly whether the property is a joint family property or individual property of the defendant No.1 secondly whether the proposed defendant no.10 is a bonafide purchaser. In the absence of pleadings as sought in the IA No.3 and in the absence of proposed defendant No.10 these points cannot be answered by considering the evidence and defense going to be placed by the parties at the time of trial. If the proposed defendant No.10 is not impleaded and in his absence no proper contentions can be made available before this Court. At the course of trial if it is found that proposed defendant No.10 is not the proper party and the property purchased by him is not joint family property then the law will take it own course. The outcome of the Judgment has bearing on the right of the proposed defendant no.10. At this stage this court does find any reason to reject the applications. When such being the case to avoid multiplicity of proceeding considering this applications are very much necessary. In the touch stone of the reasons aforesaid mentioned I answer **Point No.1 to 3 in the Affirmative.** Hence, I proceed to pass the following order.

ORDER

The I.A. No.3 filed by the applicant/plaintiff under order 6 Rule

17 R/w 151 of C.P.C. is hereby allowed.

The I.A. No.5 filed by the applicant/plaintiff under order I Rule 10 R/w 151 of C.P.C. is hereby allowed.

The plaintiff is hereby directed to amend the plaint and also file amended plaint by impleading the proposed person shown in the IA 5 as defendant No. 10.

The plaintiff is hereby directed to amend the plaint and also file amended plaint as prayed in the IA No.3.

For amendment and amended plaint by: 31.07.2026.

Senior Civil Judge & JMFC,
Manvi.