

**ORDER ON I.A. NO.1 FILED BY THE PLAINTIFF UNDER
ORDER 1 RULE 10 (2) R/W 151 OF CPC**

The present application is filed by the applicant/plaintiff praying to implead the person mentioned in the schedule of the I.A. as defendant No.5. In the affidavit annexed to the application it is stated by the plaintiff that he has filed this suit for the relief of partition and separate possession of suit schedule properties. It is alleged that the defendant No.1 illegally alienated the suit schedule property to the proposed defendant No.5. Hence, the proposed defendant No.5 is the necessary party to this suit. Hence, filed the present application by praying to implead the proposed defendant no.5 for the proper adjudication of case.

2. Upon filing of IA the notice on IA No.1 was issued to the proposed defendant no.5. The proposed defendant no.5 appeared through counsel and filed objections to IA No.1. The other defendants not chosen to file any objections to IA No.1.

3. In the objection the proposed defendant no.5 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 defendant no.1 being the absolute owner has sold the property to the defendant No.5 under the registered sale deed. The plaintiff is not at all connected with this property. The proposed defendant No.5 being the bonafide purchaser is in actual possession and enjoyment of the property. Hence, prays to reject the application.

4. Heard the arguments.

5. Perused the documents.

6. The point that arise for my consideration is:

1) Whether the plaintiff has made out sufficient grounds to allow I.A. No.1 as prayed in the I.A.?

7. My finding on the above point is in the **Affirmative** for the following reasons.

REASONS

8. **Point No. 1** :- The present suit is filed for the relief of partition and separate possession. The plaintiff contents that the property which is sold to the proposed defendant No.5 is the ancestral property. The proposed defendant contents that the defendant no.1 is the absolute owner of the suit schedule property and the same is purchased by the proposed defendant no.5. The main issue under the partition suit is initially it has to be established by the plaintiff that the suit schedule properties are ancestral joint family properties. Hence, the property purchased by the proposed defendant no.5 is ancestral property or absolute own property of the defendant no.1 can only be decided in the trial. The proposed defendant will be the proper party for the purpose of adjudication of the lis. Only the proposed defendant no.5 can efficaciously present his case and in his absence, the defense taken by the proposed defendant No.5 can be left unattended. By considering all these facts, the applicant/plaintiff has made out grounds to allow the application. Hence, I proceed to pass the following order.

ORDER

The I.A. No.1 filed by the applicant/plaintiff under order I Rule 10(2) 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 as defendant No. 5.

For amendment and amended plaint by:
29.06.2026.

Senior Civil Judge & JMFC,
Manvi.