

Order on I.A. No.25 under Order VI Rule 17 R/w
Sec.151 of CPC

The counsel for the Plaintiffs have filed this application seeking permission to amend the plaint by inserting the para No.3(a) and prayer No.5 in the plaint.

2. In the affidavit sworn in support of the present application, it is sworn by the Plaintiff No.3 that, they have filed the suit against the Defendants seeking the relief of partition and separate possession in respect of the suit schedule properties.

3. That originally the suit schedule properties are the ancestral and self acquired properties of their late father Sri.Krishnappa. That the suit schedule item No.2 and 3 properties are the self acquired properties of their father. However, her sister i.e., the Defendant No.2 has illegally got created the gift deed from her mother pertaining to the said items of the properties and therefore the suit for Partition is filed.

4. That recently the Defendant No.5 to 20 have got impleaded claiming right over the suit schedule item No.2 and 3 properties. There is no pleading with regard to these facts. When she verified the revenue documents after the Defendant No.5 to 20 filed impleading application she came to know about these facts. Therefore, it is necessary to plead about these developments in the light of the Defendant No.5 to 20 having been impleaded in the suit. Therefore, by allowing this application, no loss or hardship is going to be caused to the other side and on the other hand by rejecting the same, they will be put to great loss and hardship.

5. Moreover the proposed amendments do not change either the nature of the suit or introduce a new cause of action. Therefore, the present application deserves to be allowed. Accordingly, it is prayed to allow the present application.

6. Per contra, despite given opportunity there are no objections filed to the present application by the Defendants.

7. Heard the learned counsel for the Plaintiffs and perused the records.

8. The following points would arise for the consideration of the court:-

- i) Whether the application for amendment filed by the Plaintiffs deserves to be allowed?
- ii) If so, what order?

9. My answers to the above Points are as under:-

POINT No.(i) : In the Affirmative;

POINT No.(ii) : As per the final order for the following:-

REASONS

10. Point No.(i):- Admittedly, the Plaintiffs have filed this suit against the Defendants seeking the relief of partition and separate possession. The record reveals that, still the Trial of the case has not yet commenced. Originally there were only 2 Defendants. Thereafter, by virtue of the applications filed by the Plaintiffs, the additional Defendant No.3 to 20 have been added to the suit. Therefore, by virtue of the proposed amendments, the Plaintiffs are intending to add para No.3(a) in the plaint so as to plead about the facts as to why the additional Defendant No.5 to 20 are necessary to adjudicate the suit and also to add the additional prayer of declaration that the sale deeds executed in favour of the Defendant No.5 to 20 are not binding on them.

11. None of the contents of the affidavit sworn by the Plaintiffs is denied by any of the Defendants. Therefore, considering the fact that the additional Defendant No.5 to 20 have been subsequently impleaded in the suit, it is necessary to plead about them in the plaint. Therefore, the proposed amendment do not change the nature of the suit or introduces a new cause of action. Moreover, the proposed amendments are sought at a pre-trial stage. Therefore, no impediment or prejudice is going to be caused to the Defendants by allowing the present application. Accordingly, this Point is answered in the Affirmative.

12. Point No.(ii):- In view of my answer to Point No.1, I proceed to pass the following:-

ORDER

I.A No.25 filed by the Plaintiffs under Order VI Rule 17 R/w Sec.151 of CPC., is hereby allowed.

The Plaintiffs are permitted to amend the plaint as prayed for and file amended plaint by 19.04.2023.

Prl. Senior Civil Judge & CJM,
Ramanagara.