

ORDERS ON IA No. 16

The Defendant No. 2 has filed this IA under Section 151 CPC praying for a direction to the Plaintiff to include the inventoried movable properties (gold and silver articles detailed in the Court Commissioner's report) into the Suit Schedule Property.

2. It is contended that, the Defendant No. 2 in paragraph 13 of his written statement has stated that the Plaintiff, with dishonest intention, left out valuable gold and silver family articles kept under lock and key in the residential house. To substantiate this, a Court Commissioner was appointed pursuant to the order of the Hon'ble High Court in Writ Petition No.4630/2024 dated 26.11.2025. The Court Commissioner has executed the warrant, prepared a formal inventory and submitted a report confirming the physical existence of gold and silver ornaments. The second defendant argues that these movables are joint family properties liable for partition and their inclusion is absolutely necessary for an effective and final decree and hence prayed to allow the application.

3. The Plaintiff filed objections to the application and argued that, defendant has no legal right to dictate or direct the Plaintiff as to which properties must be included in the plaint. On these grounds, the Plaintiff seeks dismissal of the application.

4. The Points that arise for Consideration are as under;

1. Whether the Plaintiff can be directed to include left-out properties in a partition suit at the instance of the defendants?

2. Whether the inclusion of the inventoried gold and silver articles is necessary for a just and final adjudication of the dispute?

3. What order?

5. My findings to the above points are as under:

Point no.1	In the affirmative
Point no.2	In the affirmative
Point no.3	As per the final order for the following.

REASONS

6. Ordinarily, the plaintiff is the *dominus litis*, the master of his suit and cannot be forced to sue a person or include a property against his wish. However, a suit for partition is a major exception to this rule. In a partition suit, the positions of the plaintiff and the defendants are interchangeable. Every party is in the shoes of a plaintiff seeking their respective share of the entire joint family pool.

7. It is a well-settled principle of Hindu Law and civil jurisprudence that a suit for partition must encompass all the joint family properties. A suit for partial partition is generally bad in law. If valid joint family properties are deliberately or accidentally left out, the court has the inherent power to ensure

they are brought into the hotchpot to avoid multiplicity of proceedings.

8. The Hon'ble High Court in W.P. No. 4630/2024 explicitly permitted the inventorying of these articles. The Court Commissioner has secured and listed them, the properties physically exist (as per the Commissioner's report) and the Plaintiff does not deny that these properties are liable for partition.

9. Leaving these properties out would result in an incomplete, defective decree, forcing the parties into a second round of litigation. This defeats the core objective of Order I Rule 10 and Section 151 of the CPC, which seek a comprehensive and final settlement of all disputes between the parties.

10. The technical objection that, a defendant cannot direct the plaintiff to amend the plaint cannot override the court's duty to ensure a just adjudication. Forcing the defendant to file a separate counter-claim or a separate suit for a few ornaments when a partition suit is already active would be a failure of justice.

11. Therefore, this court is of the opinion that the application filed by the defendant no.2 deserves to be allowed. To preserve the format of the pleadings, the Court will direct the Plaintiff to amend the plaint schedule. If the Plaintiff fails to do so, the Court

will permit the Defendant's inventory to be appended as a "Defendant's Schedule Properties" to be considered during the final decree proceedings.

12. Accordingly, I answer point no. 1 and 2 in the **Affirmative**.

In view of the aforesaid reasons I proceed to pass the following:

ORDER

The IA filed by Defendant No. 2 is Allowed.

The Plaintiff is directed to amend the Plaint and include the gold and silver articles detailed in the Court Commissioner's Inventory Report into the Suit Schedule on or before the next date of hearing.

If the Plaintiff fails to amend the Plaint within the stipulated time, the Court Commissioner's inventory report shall automatically be treated as an addendum to the properties available for partition and shares will be determined on them at the time of the final decree.

No order as to costs.

(Dictated to the Stenographer on online computer, typed by her, corrected by me and then pronounced in the open court this the 16th day of June, 2026.)

(Raghavendra Shettigar)
Prl. Senior Civil Judge & JMFC,
Sagar.

