

ORDERS ON I.A.No.1

The counsel for the plaintiff had filed IA No.1 u/o 1 Rule 10 r/w/s 151 of CPC with a prayer to delete the defendant No.5 from the present case as he is neither a proper nor a necessary party to the suit.

The defendant No.5 has failed to appear before the Court and has been placed exparte.

Perused the materials on record. In the affidavit annexed to the IA it is submitted that the plaintiff has filed the present suit for partition and separate possession, but however, the defendant No.5 is not a proper and necessary party to the suit and his presence is not necessary to decide the dispute between the parties and if the present application is not the plaintiff would be put to much hardship and loss and among these grounds prays for the application to be allowed.

It is pertinent to note that the plaintiff is the dominus litus of a suit, but however, the present suit has been filed for the relief of partition and separate possession. The plaintiff has insisted that the defendant No.5 is not a proper or

necessary party to the suit and his presence is not necessary. No explanation has been given by the plaintiff as to why the name of defendant No.5 was included in the first place. No explanation has been given if the defendant No.5 is the member of the joint family or not. But, on perusal of the genealogical tree described in the plaint the name of defendant No.5 does not find a place. Since the plaintiff has submitted that the defendant No.5 is a proper or necessary party, it appears that his name can be deleted from the present suit, but however, if it is found later that the presence of defendant No.5 was necessary, then the plaintiff would not succeed in his case. Hence, IA No.1 is allowed as per the prayer of the plaintiff.

To carry out amendment and to file amended plaint.

Call on 04.02.2025.

C/c Prl. Civil Judge and JMFC,
Pavagada