

KAUK020002892021



**ORDERS ON I.A.NO.IV AND V**

I.A.No.IV is filed by the counsel for the plaintiff under Order VI Rule 17 R/W.Sec.151 of C.P.C. to amend the plaint as per the schedule of the amendment.

I.A.No.V is filed by the counsel for the plaintiff under Order XX Rule 12 R/W. Sec.2(12) of C.P.C., to appoint advocate commissioner to determine mesne profits received by defendants No.2 and 3 from the suit properties and to direct the defendants to deposit the same in court till disposal of this suit.

2. The same is brought to the notice of the counsel for the defendants who has filed objections to the said applications.

3. Perused the applications and the objections and heard both sides.

4. The following points arise for my consideration:

1. Whether sufficient grounds are made out to amend the plaint as prayed in the application ?

2. Whether sufficient grounds are made out to allow the I.A.No.V?

3. What Order ?

5. My findings on the above points are as follows:

Point No.1: In the **affirmative**.

Point No.2: Kept in abeyance.

Point No.3: As per final order,  
for the following:

### **REASONS**

6. **Point No.1**:- The plaintiff has filed this suit for the relief of Partition and Separate Possession of the ancestral property which has come to her husband's share. It is submitted that the defendants are in possession of the suit properties and have rented out the properties and getting income of Rs.2 to 3 Lakhs from the shop and offices situated in the schedule properties, hence, intends to seek for the relief of share in the mesne profits and hence, prayed to allow the application.

7. In the objections filed, it is submitted that the proposed amendment is false and baseless and even though there is a contention taken in the written statement to add certain properties which are left out, the plaintiff has chosen to add only one property as schedule 'C'. In addition, the plaintiff herself has admitted in her own pleadings that she is in joint possession and enjoyment of the property and hence, the prayer sought in para No.2 to the prayer column is contrary to her own pleadings and hence, prayed to reject the application.

8. On perusal of the plaint and written statement, it is clear that the plaintiff had only one property at 'C' schedule and also contended that the suit properties are joint possession and enjoyment of the plaintiff and defendants. However, at the stage of amendment of the plaint, it is not necessary to go into the merits of the case. The plaintiff include one property and claim mesne profits, hence, there is no impediment to permit the plaintiff to amend the plaint, since, the trial in this case is yet to be commenced. On the other hand, for the proper adjudication of the case on merits and in order to avoid multiplicity of proceedings, it is just and proper to allow the application. Hence, I answer Point No.1 in the **affirmative**.

9. **Point No.2:-** As far as the determination of the mesne profits is concerned, it has to be first decided whether the plaintiff has entitled for mesne profits and determination of the mesne profits is a matter to be ascertained in the final decree proceedings, since the question whether the plaintiff proves wrongful possession of the defendants in the suit property and the question whether she is entitled for mesne profits from the defendants is yet to be decided. Hence, at this stage, it is prematured to direct the court commissioner to ascertain the mesne profits. Since the plaintiff has sought for amendment of the plaint including prayer of mesne profits, the same can be determined at the time of passing of the decree and final decree proceedings or by separate enquiry.

10. **Point No.3:-** In view of my findings on points No.1 and 2, I proceed to pass the following:

**ORDER**

I.A.No.IV filed by the counsel for the plaintiff under Order VI Rule 17 R/W.Sec.151 of C.P.C. is hereby allowed.

The plaintiff is permitted to amend the plaint as per the amendment schedule within 14 days of the date of this order subject to payment of additional court fee if any and to furnish the amended copy of the plaint.

I.A.No.V filed by the counsel for the plaintiff under Order XX Rule 12 R/W. Sec.2(12) of C.P.C., is kept in abeyance pending disposal of the suit.

**Prl. Senior Civil Judge & CJM.,  
Karwar.**