

**ORDERS ON IA.NO.IV**

This is an application filed by the plaintiff No.1 U/o 6 Rule 17 of CPC, requesting the court to permit the plaintiff to amend the plaint as mentioned in the schedule prayer.

**2.** Said application is accompanied with an affidavit sworn by the plaintiff No.1, wherein they are stated that, now the case is posted today for orders, fling the amended plaint on their behalf. The suit schedule item No.3 property is the complex towards the road side and which has been let out to the defendant No.7 and 8. The said defendant No.7 and 8 are the tenants under the defendants herein. Since that the suit schedule item No.3 property is also subjected to partition as the same is the ancestral property of him. The plaintiff No.2 and the defendants, the defendants themselves are enjoying the rents derived from the complexes paid by the defendant No.7 and 8. Since that

the suit schedule item No.3 property is ancestral property, he is also entitled for the incomes/gains generated out of the same. The plaintiff entitled for the incomes generated out of the suit schedule item No.3 property it is necessary for him to amend the plaint and to make his claim against the said defendant No. He craves the leave of this Hon'ble court to permit him to amend the plaint as shown in the schedule annexed to this application in the present case and to proceed with the case. Therefore the plaintiff has filed the above application.

**3.** The above application is objected by counsel for the defendants on the ground that the application filed for amendment of plaint in prayer column is false, vexatious and not maintainable either in law. The application filed by the plaintiff No.1 seeking amendment of the application of the petitioner is sought for plaint including prayer portion, it will affect the rights and interest of the defendant and it will change the nature of the suit and introduce the new facts of the suit, so that when any changes were made in the plaint it will affect the rights of the defendants in the suit, hence the application is not maintainable under law. Now the plaintiffs have sought the amendment of plaint para No.IV as inserted the IV (a) as about the ancestors, and then the plaintiffs and defendants are the joint and constructive possession, so that the version of the plaint averments are contrary from the present amendment as such the application is not maintainable under law. As such why the amendment is necessary for them, and also the application filed by the petitioner is not within the time of limitation from the impleading of defendants, so that the application itself is not maintainable under law. On these grounds the application is filed by the plaintiff deserves to be dismissed.

4. Heard on both side.
5. Perused the records placed before the Court.
6. On the basis of the above facts, the following points that arise for my consideration are;

1. *Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?*
2. *What order ?*

7. My answer to the above points are;

Point No.1 : In the Affirmative;

Point No.2 : As per the final order,  
for the following;

### **REASONS**

**8. Point No.1:-** The above suit is filed seeking relief of partition and separate possession in the suit schedule property. When the matter is posted for cross of PW.1, the plaintiff come up with this application for seeking amendment of plaint. On the other hand the defendants have taken contention that if the application is allowed entire nature of suit will change and rights of the parties and cause action also change, introduce new facts of the suit, so when any changes were made in the plaint with effect the rights of the defendants in this suit. The amendment for entire plaint body is not permissible in the eye of law. The application is filed belated stage.

**9.** On perusal of entire material available on record, it could be seen that the plaintiff has filed this suit partition and separate possession in respect of suit property. According to the applicant/plaintiff the schedule property has not been included in the plaint. Inclusion of said property as mentioned in the schedule to the application is very necessary for effective adjudication of dispute between the parties in this suit.

**10.** No doubt as per amended CPC no amendment to the pleadings be allowed. Once trial is commenced. But there is provision provided wherein amendment to the pleadings even after commencement of trial is permissible in the case, such amendment is very much necessary for effective adjudication of lis between the parties. As suit is one for partition and separate possession. The suit item No.3 property it is ancestral property and these plaintiffs have their right of share over the same and said property is also subjected the partition and the plaintiffs are entitled for the income/gains generated from the said property. When settled preposition of law that, all properties of joint family should included in common hostchpot. Further proposed amendment does not change nature of suit or cause of action. Moreover amendment is sought at pre-trial stage. Hence this application deserves to be allowed. Hence I answered point No.1 in the Affirmative.

**11. Point No.2:-** on above made discussion on point No.1, I proceed to pass the following;

OS.No.158/2013

**ORDER**

IA.No.IV filed by the plaintiff U/O.6 Rule 17  
R/w Sec.151 of CPC is hereby allowed on  
payment of costs of Rs.500/-.

The plaintiff is permitted to amend the plaint  
has prayed in the application and furnish  
amendment plaint on next date of hearing.

Call on:06-02-2023.

Civil Judge & JMFC.,  
Harapanahalli.