

ORDERS ON I.A. No.4 to 6

1. The learned counsel appearing for the plaintiffs had filed application U/o 6 rule 17 of CPC seeking permission to amend the plaint.
2. The learned counsel appearing for the defendants No.1 and defendants No.3 to 5 have filed the objections to the aforesaid application.
3. Heard the learned counsel appearing for the respective parties.
4. It is sought in the application on hand that, to permit the plaintiffs to amend the plaint and to include the other 6 properties situated in Sy.No.273/1B, 400/3A, 400/3B, 400/3C and 400/2B2 and it is pleaded in the application that the aforesaid properties have been purchased by the defendant No.1 in his name and also in the name of his 2nd wife and 3rd wife and also in the name of his son, by using the joint family funds, accordingly, plaintiffs are having their legitimate share in the aforesaid properties. Further plaintiffs have requested to include the above mentioned pleadings in the 4th paragraph of the plaint.
5. As aforesaid, the learned counsel appearing for the defendants have filed the objections to the application on hand and it is contended by them

that, previously the present plaintiffs have filed another suit in O.S.No.16/95 through their mother for the relief of partition and separate possession and on 14.12.1999, the present plaintiffs have moved an application before the court U/o 23 rule 1 of CPC and U/o 32 rule 7 of CPC and prayed for permission to abandon their claim and court has permitted the plaintiffs to withdraw their case, by abandoning their claim, therefore, when the plaintiffs themselves have abandoned their plaint, the suit itself is not maintainable hence, on the same point the present suit deserve to be dismissed and properties which the plaintiffs are intended to include in the present suit are different and those properties are self acquired properties and those properties are not at all related to the plaintiffs and defendant No.1. Along with the objections defendants have produced the order-sheet in O.S.No.16/95 (in Xerox) and also produced the copy of the petition filed u/o 23 rule 1 of CPC therein.

6. I have carefully considered the nature of the amendment sought to be permitted and also I have carefully considered the objections made by the defendants to the application on hand.
7. The present suit being filed for the relief of partition and separate possession wherein the plaintiffs have

stated that, they and defendants No.1 and 2 are the joint owners, having joint possession of the properties in Sy.No.73/2 measuring 7 acres 29 guntas out of 8 acres 30 guntas and present suit came to be filed in the year 2012 and it is noticed from the records that, though the defendants have objected the present application on hand, they did not file any written statement to the original plaint, hence considering the same, I feel, at this juncture it is appropriate to allow the application on hand, moreover, though the defendants in their objections have contended that, already there was a suit filed by the present plaintiffs for the relief of partition and separate possession and they have abandoned their claim in the said suit etc., but, at this juncture, it is my considered opinion that, those aspects can be looked into at the time of hearing the case on merits. Moreover, when the written statement itself is not filed to the original plaint, I feel, it is not proper to consider the objections filed to the present application on hand, therefore, it is needless to say that, if the present application is allowed, still the defendants can file their written statement to the amended plaint, accordingly, keeping in mind the same, it is my considered opinion that, if the application on hand is allowed it will not prejudice the rights of any of the parties to

the suit, therefore, considering all the aforesaid aspects the present application deserves to be allowed.

ORDER

IA filed by the plaintiffs U/o 6 Rule 17 of CPC is hereby allowed. Plaintiffs are permitted to amend the plaint as pleaded in the application on hand and they have to carry out the amendment in the plaint and shall file the amended plaint.

Call on for amended plaint by 06-08-2016.

(S.S.BHARATH)
ADDITIONALL CIVIL JUDGE AND JMFC INDI