

**CNR NO. MHSI70000112010****Order passed below Exh. No.252
(I.A. No.3/2022) in R.C.S. No. 35/2010**

This is an application preferred by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.

2. The plaintiff has contended that the present suit is filed for partition and separate possession. The defendant no.1 has resisted the suit claim by filing written statement. The defendant has contended that the plaintiff and defendant's family are also having other properties. The said properties are not included in the suit claim. Therefore, the suit is not maintainable. It is further contended that the plaintiff and the defendants are having joint house property bearing house no.783 situated at village Kumbharmath. The defendant no.1 is residing in the said house property. Therefore, the plaintiff has not asked partition in the said house property. It is further submitted that in the month of December 2021, the plaintiff has obtained house property extract of house no.783. The plaintiff has come to know that the defendant no.1-B has recorded his name to the house property card by excluding the plaintiff. Therefore, it is necessary to insert house property no.783 in the suit claim. Accordingly, it is prayed that the plaintiff be permitted to carry out amendment.

3. The defendant no.1-B and 1-C have resisted the application by filing say on overleaf of the application. It is contended that the plaintiff is not having any concerned with the said house property. The plaintiff has preferred the application belately stage. Therefore the application is liable to be rejected.

4. The defendant no.13-A is also resisted the application by filing say on overleaf of the application. It is contended that the plaintiff has not assigned any sufficient reason, why the said house property is not included in the suit claim. Therefore, the application is liable to be rejected.

5. Heard both the parties. The present suit is filed for partition and separate possession. It is well settled that whenever the partition has taken place, it should be complete partition of all the properties. The plaintiff has contended that the house property no.783 is a joint property of the plaintiff and the defendants. If the said property is not included in the suit claim, the partition will not be complete. Moreover, the present application is preferred before the commencement of trial. The intended amendment will not change the nature of the suit. By allowing the present application, no prejudice will be caused to the defendants. Therefore, the plaintiff needs to be permitted to carry out the proposed amendment. Thus, the application filed by the plaintiff is liable to be allowed and accordingly, I pass following order.

ORDER

1. The application at **Exh.252** is hereby allowed.
2. The plaintiff shall carry out amendment on or before next date from the date of order and provide amended copy of plaint to the defendants free of Costs.

(Pronounced and dictated in open Court.)

Place : Malavan
Date : 28/02/2023

Mahesh R. Devkate
Jt. Civil Judge Jr.Dn., Malvan.