

**IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C. GOKAK**

PRESENT

SRI.R.CHANDRAPPA HONNUR, M.A.LL.B(Spl.)
II Addl. Senior Civil Judge & J.M.F.C. Gokak.

DATED THIS THE 6TH DAY OF JULY 2020

OS No.159/2019

PLAINTIFF : Smt. Shivalila W/o Murageppa Gadavi

// Versus //

DEFENDANTS : Sri. Shivalingappa and others.

IA No.IV

APPLICANT/
PLAINTIFF : Smt. Shivalila W/o Murageppa Gadavi

// Versus //

RESPONDENTS : Sri. Shivalingappa & others
/ DEFENDANTS

ORDERS ON IA NO.IV U/O.6 R.17 R/W.SEC.151 CPC

Plaintiff has filed an application for amendment of the
plaint. The plaintiff has sworn to an affidavit in support of
the application. It is stated in the affidavit that due to
inadvertence the word declaration not added in the plaint.
The proposed amendment will not change the nature of suit

and cause of action. If the application is allowed no harm would be caused to other side. If the application is not allowed she would be put to irreparable loss and injury. Therefore, she prayed to allow the application.

2. Application filed by the plaintiff is resisted by defendant No.1. It is contended in the objection that the contents of affidavit filed in support of IA No.IV are false. The plaintiff has not made out grounds to allow the application. The plaintiff has filed the present application with an intention to drag the matter. Therefore, the defendant No.1 has prayed to dismiss the application with cost.

3. I have heard arguments of learned counsel for the plaintiff and defendant No.1. Perused the materials on record.

4. The points that arise for my consideration are as follows:

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?
2. What order?
5. My findings to the above points are as follows:

Point No.1 : In the affirmative

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

REARSONS

6. **POINT NO.1:** The plaintiff has filed the suit for declaration and partition of his 1/4th share in the suit properties. The plaintiff wanted to add word declaration in the plaint by way of amendment. The defendant No.1 has filed objection and contended that the plaintiff has come up with present application with an intention to drag the matter hence, he prayed to dismiss the same. In the decision reported in 2012 SCCR 425 Rameshkumar Agarwal V/s Rajmala Exports Pvt. Ltd. and others, the Hon'ble Apex Court has held that court must not refused bonafide, legitimate, honest and necessary amendments and should never permit malafide and dishonest amendments. It is further held that courts while deciding such prayers should not adopt a hyper technical approach- Liberal approach should be general rule particularly in cases where other side can be compensated with costs. In the instant case, the trial is not commenced and the proposed amendment is formal in nature. Therefore, I am of the view that the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. The defendant No.1 can be compensated by way of cost. Accordingly, point No.1 answered in the affirmative.

7. **POINT NO.2:** In view of my finding on the point No.1, I proceed to pass the following.

ORDER

IA No.IV U/o 6 Rule 17 R/w 151 of CPC filed by the plaintiff is allowed on cost of Rs.2,000/-.

The plaintiff is permitted to carry out amendment in the plaint as sought in IA No.IV and furnish amended plaint in duplicate along with verifying affidavit.

(Dictated to the judgment writer directly on computer, corrected and then pronounced by me in the open court on this the 6th day of July 2020.)

(SRI. R.CHANDRAPPA HONNUR)
II Addl. Senior Civil Judge & J.M.F.C. Gokak