

ORDERS ON I.A.V U/O. VI RULE 17 R/W. SECTION 151 OF CPC

This is an application filed by plaintiffs seeking permission to amend the plaint as shown in the schedule of amendment annexed to the application i.e in page No.3 in description schedule – B added as an agricultural land measuring 35 guntas out of 01 acre 12 guntha in R.S.No.309/3 of Waghavade village, Belagavi.

2. Said application is accompanied with an affidavit sworn by the plaintiff No.1, wherein she has stated that the present suit is filed for partition, separate possession, declaration and permanent injunction with respect to the suit property i.e house property. Thereafter, she came to know that their agricultural land is not added as a suit property and she came to know that the proposed suit property is also their ancestral property where the name of the defendant Nos. 2 to 6 are appeared along with her mother and after the death, name of her mother is deleted from the cause title. Further it is contended that the suit properties are their ancestral properties and they have got their rights and share over the same, hence the proposed suit property is to be impleaded. Said amendment is required to decide their share over the proposed property and they have also right over the same. Said amendment will not change the nature of the suit. Hence, prayed to allow the application.

3. The said application is resisted by the defendants by filing objection, wherein they have denied the contents of the affidavit as false and contended that at the time of filing the suit, the plaintiffs have purposely not added the said property in this suit. If the said amendment is allowed, it will change the nature of the suit as well as cause of action. Hence, prayed to reject the application.

4. Heard the arguments . Perused the records.

5. 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 ?

6. 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

7. **Point No.1:-** The plaintiffs have filed this suit against the defendants seeking partition, separate possession, declaration and permanent injunction in respect of the suit property. The present application is filed seeking amendment of the plaint as detailed in the

application. The plaintiff contend that at the time of filing of the suit, he had not added the agricultural land as a suit property. On verification, she came to know that the proposed suit property is also their ancestral property. Therefore, it is necessary to include the said property. They are entitled for the share in the said property. Further contend that the amendment does not change the nature of the suit. On the other hand, the defendants have filed objections contending that the plaintiffs have purposely not added the said property in this suit. There is negligence on the part of the plaintiffs in moving the said amendment application. Hence, prayed to reject the application.

8. It is pertinent to note that the present suit is filed by the plaintiffs against the defendants seeking partition, separate possession, declaration and permanent injunction. The plaintiffs contend that they intend to add property detailed in the application. Further contended that the said property is the ancestral properties. It is pertinent to note that the burden is on the plaintiffs to prove that the property which they intend to insert in the suit schedule is ancestral or not. The plaintiffs produced the copy of RTC of the property which they intend to insert in the suit schedule by way of amendment. As far as amendment is concerned, it does not change the nature and cause of action. However, the present application is filed after lapse of more than 4

years. Hence, the present application deserves to be allowed by imposing costs. Accordingly, point No.1 is answered in the **Affirmative**.

9. **Point No.2:-** In view of above discussion, I proceed to pass the following;

ORDER

**IA.No.V filed by the plaintiffs U/O.6 Rule 17 R/w
Sec.151 of CPC is hereby allowed on cost of
Rs.300**

**The plaintiffs are permitted to amend the plaint
as per schedule of amendment mentioned in the
application.**

To carry out amendment and amended plaint by

IV Addl. Civil Judge & JMFC.,
Belagavi.

