

KABG500005362022



Presented on : 19-04-2022

Registered on : 20-04-2022

**IN THE COURT OF
PRL SENIOR CIVIL JUDGE GOKAK AT
GOKAK,BELAGAVI
Presided Over by Smt. Deepa. G**

O.S./302/2022

Plaintiff:

Dundavva W/o Rachayya Pujeri

Age: 65

Occupation :

Address: R/o.Prabhu nagar, Khanapur

2: Gangawwa W/o Shivalingayya Mathapati

Age:

Occupation :

R/o.Nandagaon

Tq.Gokak

3: Annawwa W/o Ramayya Mathapati

Age:

Occupation :

R/o.Ullagaddi

Khanapur

4: Basavva W/o Channayya Mathapati

Age:

Occupation :

R/o Mutnal
Tq.Goka

VERSUS

Defendent:
Gouravva W/o Rachayya Nooli
Age: 78
Occupation :
Address: R/o.Mutnal, Tq.Gokak

2:Adavayya S/o Allayya Mathapati
Age: 52
Occupation :
R/o.Mutnal
Tq.Gokak

3:Basayya S/o Allayya Mathapati
Age: 42
Occupation :
R/o.Mutnal
Tq.Gokak

4:Basayya s/o Siddayya Mathapati
Age: 48
Occupation :
R/o.Mutnal
Tq.Gokak

5:Surekha W/o Irayya Nooli
Age: 45
Occupation :
R/o.Mutnal
Tq.Gokak

6:Channawwa W/o Mahantesh Hiremath

Age: 38
Occupation :

R/o.Mamadapur Tq.Gokak

7:Shivanand @ Shivalingayya S/o Irayya Nooli

Age: 25

Occupation :

R/o.Mutnal

Tq.Gokak

8:Danamma W/o Virabhadrayya Nilajagimath.

Age: 23

Occupation :

Nirvanhatti

Tq.Hukkeri

9:Sudha D/o Irayya Nooli

Age: 19

Occupation :

R/o.Mutnal

Tq.Gokak

10:Basavaraj S/o Laxman Hulloli

Age: 48

Occupation :

R/o.Mutnal

Tq.Gokak

11:Ashok S/o Laxman Hulloli

Age: 46

Occupation :

R/o.Mutnal

Tq.Goka

ORDERS ON IA-No.7, FILED U/O 6 R 17 R/W.SEC 151
CPC

The advocate for the plaintiffs has filed the above application and sought for amendment in the schedule of the suit schedule property as mentioned in the application schedule on the grounds that the plaintiffs have filed the above suit against the defendant for the relief of partition and separate possession. At the time of the institution of the suit, due to oversight, the schedule of the property bearing R.Sy.No.867 was mentioned wrongly. Hence, there is a necessity of amending the plaint by mentioning the correct schedule to the property. Hence, filed this application. If the application is allowed, no hardship will be caused to these defendants and on the other hand, if the application is not allowed, much hardship will be caused to the plaintiffs. Accordingly, sought for allowing the application.

2. On the other hand, the defendants have filed objections and denied the averments of the affidavit and

contended that at the time of institution of the suit, the plaintiffs have mentioned schedule to the properties. Whereas, the plaintiffs have come up with the instant application alleging that due to oversight, there is mistake in the schedule mentioned to the suit schedule property. The said fact is not believable one. The plaintiffs have not made out any grounds to allow the application. The plaintiffs have come up with this false application to drag on the matter. The plaintiffs are not at all in possession of the suit schedule property. Hence, they have filed false suit based on the false facts. Hence, if the application is allowed, much hardship will be caused to the defendants and on the other hand, if the application not allowed, no hardship will be caused to the plaintiffs, Accordingly, sought for allowing the application.

3. Heard both the advocates on I.A. Perused the material on record.

4. The points that arise for my consideration are:

1. Whether the proposed amendment is necessary for determination of the real controversy between the parties?

2. What Order?

5. My findings on the above Points are:

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

R E A S O N S

6. **Point No.1:** On perusal of the material on record, it reveals that the plaintiffs alleged to be the daughters of the defendant No.1 have come up with the instant suit against the defendant No.1 and others for the reliefs of the partition and separate possession in respect of the suit schedule properties. Whereas, when the case was set down for evidence of the plaintiffs, these plaintiffs have come up with the instant application and sought permission to amend the schedule mentioned to the property bearing R.Sy.No.261/1 alleging that there is a mistake in the schedule mentioned to the property. Whereas, the said

application has been resisted by the defendants alleging that they have not made out any grounds for allowing the application.

7. Whereas, the averments of the affidavit annexed to the application reveal about the fact that due to oversight, they have mentioned wrong schedule to have property bearing R.Sy.No.867. But, no specific reason assigned for the alleged oversight. But, the said fact will in no way disentitles the plaintiffs from claiming the relief under the application, as the parties to the suit yet to commence the trial and also it is very much necessary for identification of the property. That further, if the application is not allowed, much hardship will be caused to the plaintiffs in case of their success in the suit as they cannot enjoy the fruits of the decree for want of identification of the property. On the other hand, if the application is allowed, no hardship will be caused to the defendants as they will have the opportunity of cross-examining the plaintiffs and their witnesses if any. That further, the proposed amending is necessary for determination of real controversy between the parties. As

such, this court is of the considered opinion that the plaintiffs have made out grounds to allow the application. In the circumstances and in the light of the above discussion, the point No.1 is answered in the Affirmative.

8. **Point No.2**: For the aforesaid findings, I proceed to pass the following:

O R D E R

IA No.7, filed U/O 6 R 17 R/W
Sec 151 CPC is hereby allowed on
cost of Rs.100/-.

Accordingly, plaintiffs are
permitted to carry out amendment
as mentioned in the application
schedule and are directed to
furnish amended plaint.

For amendment and to
furnish amended plaint by
02/01/2024.

Prl.Sr.C.J.Gokak.