

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 16th day of June, 2022

O.S.No.435/2019

- Plaintiffs:
1. Siddappa S/o. Ramappa Ketannavar,
Age: 52 years, Occ: Agriculture,
R/o: Mamadapur village, Gokak taluk.
 2. Nagappa S/o. Ramappa Ketannavar,
Age: 48 years, Occ: Service & Agri.,
R/o: Mamadapur village, Gokak taluk.

(By Sri. KSH., Advocate)

V/s

- Defendants:
1. Yallavva W/o. Laxman Nandagoudra,
Age: 65 years, Occ: Household,
R/o: Mannikeri village, Gokak taluk.
 2. Laxman @ laxmappa S/o. Ramappa
Ketannavar,
Age: 62 years, Occ: Agriculture,
R/o: Mamadapur village, Gokak taluk.
 3. Beerappa S/o. Ramappa Ketannavar,
Age: 59 years, Occ: Agriculture,
R/o: Mamadapur village, Gokak taluk.
 4. Tippanna S/o. Ramappa Ketannavar,
Age: 55 years, Occ: Agriculture,
R/o: Mamadapur village, Gokak taluk.
 5. Mahadevi W/o. Balappa Mannikeri,
Age: 45 years, Occ: Household,
R/o: Sainik Nagar, Camp Area,
Belagavi, Belagavi taluk & district.

(D1, 4 & 5 exparte)
(D2 By Sri. RMB., Advocate)
(D3 By Sri. ASK., Advocate)

I.A. No.3

Applicant : Beerappa
V/s
Opponents : Siddappa and another

ORDERS ON IA No.3 FILED UNDER ORDER 6 RULE 17 READ WITH
SECTION 151 OF CPC

The 3rd defendant has made the instant application seeking permission to amend the written statement by incorporating the proposed amendment as mentioned in the application on the grounds that the plaintiffs have filed the suit for the relief of partition against the defendants and the 3rd defendant appeared through his counsel and filed his written statement. But, at the time of filing of written statement through oversight some important facts have not been narrated by him to his counsel. He got changed his earlier counsel and has given instructions to his new counsel regarding the proposed amendment. There is no willful delay in filing this application. Hence, it is just and necessary to amend and insert the proposed amendment, which neither changes the nature of the

suit nor brings a new cause of action. If the application is not allowed the 3rd defendant will be put to heavy loss, which cannot be compensated in terms of money. If the application is allowed other side will not be put to any loss or hardship.

2. This application is resisted by the plaintiffs contending that the averments made therein are false and have contended that in the suit issues have been framed and the PW1 is examined and the case is set down for cross-examination of PW1. As per the amended CPC, at this stage, this application is not maintainable in the eye of law. The said land bearing R.S.No.231/1 was already given to the family of plaintiffs, defendants and one Ganiger family and R.S.No.231/2 measuring 01 acre and 11 guntas belongs to the Ganiger family and remaining land R.S.No.231/13 measuring 01 acre and 15 guntas belongs to the family of the plaintiffs and defendants. Therefore, the question of impleading Ganiger family as parties does not arise. Further, if the court comes to conclusion that if any property needs to be included in the suit, the plaintiffs are ready to include the same. Question of impleading Ganiger family and their share in respect of 01 ace and 11 guntas does not arise.

Accordingly, it is prayed for dismissal of the application with cost.

3. I have heard the learned counsel appearing for the plaintiffs and 3rd defendant and perused the material on record. Rest of the defendants have not submitted arguments.

4. Points that arise for consideration of the court are;

1. Whether the 3rd defendant has made out grounds to allow the present application?

2. What Order?

5. Findings of the court on the above points are as under:

Point No.1: in the affirmative and

Point No.2: as per the final order for the following:

R E A S O N S

6. Point No.1; as could be seen from the proposed amendment, it relates to inclusion of property measuring 02 acres and 02 guntas of Sy.No.231/1, joinder of necessary parties, fact relating to self acquisition of property of R.S.No.308 by the 3rd defendant, oral partition and maintainability of the suit for non

mentioning of the boundaries of the suit properties. At the outset, plaintiffs have not opposed for insertion of the facts relating to self acquisition of the property by the 3rd defendant, oral partition and maintainability of the suit for non mentioning of boundaries. However, they have contended that the said property belongs to the Ganiger family. Hence, no need to include the same and made the members of the Ganiger family as parties to the suit.

7. This suit being a partition suit, all the properties of the family of the parties and also necessary parties need to be joined and included in the suit. The question that the said property was given to the Ganiger family and whether or not it is available for partition has to be decided after full pledged evidence only. Therefore, the contention raised by the plaintiffs cannot be accepted and the proposed amendment needs to be allowed in order to decide the controversy between the parties and meet the ends of justice. Accordingly, the point No.1 is answered in the affirmative.

7. Point No.2; in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA No.3 filed Under Order 6 Rule 17 R/W/S 151 of CPC, is hereby allowed as prayed for on cost of Rs.200/-.

The 3rd defendant is permitted to amend his written statement as sought in the present IA.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 16th day of June, 2022)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak