

KABG600002452017



IN THE COURT OF THE SENIOR CIVIL JUDGE, HUKKERI.

*Before: Sri, K.S.Rotter, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri.*

Dated this 18th day of February 2025

O S No.68/2017

Plaintiffs: Smt. Mahadevi Ravasab Patil and others

-Versus-

Defendants: Shri Basagouda Ramappa Ammanagi and others

Parties to IA No.XIII & XIV

Applicants/Plaintiffs: 1. **Smt. Mahadevi Ravasab Patil,**
Age: 47 years, Occ: Agriculture,
R/o: Kochari, Taluk: Hukkeri,
District: Belagavi and others.
(By Shri M.S. Hiremath, advocate)

-Versus-

Respondent/Defendant No.9: **Shri Basavanni Annappa Ammanagi,**
Age: 50 years, Occ: Agriculture,
R/o: Gudas, Taluk: Hukkeri,
District: Belagavi and another
(By Shri P.R. Chougala. Advocate)

Respondent/Defendant No.7: **Shri Ramesh Basagouda Ammanagi,**
Age: 28 years, Occ: Agriculture,
R/o: Gudas, Taluk: Hukkeri,
District: Belagavi.

(By Shri A.M. Hyatagol. Advocate)

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- i). *Provisioned under which the applications are filed* : *IA No.XIII U/O VI Rule 17 R/w Sec.151 of CPC*
IA No.XIV U/O VII Rule 14 of CPC
- ii). *Relief sought for* : *For amendment of plaint and production of documents*
- iii). *The date on which the Applications are filed* : *03.09.2024*
- iv). *Number of the applications* : *IA No.XIII & XIV*
- v). *The date on which the objections are filed by the different opponent* : *IA No.XIII on 30.09.2024*
IA No.13 & 14 on 30.09.2024
- vi). *The date on which orders were Passed on the said application* : *18.02.2025*

Stage of the suit: For further cross-examination of DW1

(K.S.Rotter)
Senior Civil Judge, Hukkeri.

COMMON ORDERS ON I.A.No.XIII & XIV

- The plaintiffs have filed IA No.XIII under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code, praying therein for amendment of plaint and for adding suit 'B' schedule item No.1 to 4 properties in plaint schedule.
2. The plaintiffs have also filed another IA No.XIV under Order VII Rule 14 of Civil Procedure Code, for the production of documents, which are produced along with this IA.
 3. In support of the above said applications, the plaintiff No.1-Smt. Mahadevi Ravsab Patil has filed her sworn affidavit stating that, they have filed the present suit against the defendants seeking partition and separate possession of the suit properties. However, at the time of filing the present suit, they have not included the proposed schedule 'B' properties in the plaint schedule by oversight. Further plaintiffs stated that, the defendants in their written statement taken contention that the plaintiffs have not included all the properties acquired from the ancestors. Now, the plaintiffs have collected the documents pertaining to the 'B' schedule properties and therefore, the plaintiffs

stated that, it is just and necessary to amend the plaint by including the proposed 'B' schedule properties and if the applications are not allowed, they will be put to irreparable loss and hardship. Further the plaintiff No.1 also stated that, they have not produced some important documents in this case through oversight and now they have secured the said documents and production of the said documents is just and necessary. Hence, plaintiff No.1 prayed for allowing the I.A.No.XIII and XIV.

4. On the other hand, defendant No.9 has filed objections to the I.A.No.XIII stating that, the application and affidavit filed in support of the said application for amendment of plaint are false, frivolous and not maintainable under. The defendant No.9 denied that, the plaintiffs have not included the suit 'B' schedule properties through oversight as stated in the affidavit. The defendant No.9 stated that, the plaintiffs have filed false and frivolous suit against the defendants and defendants No.8 and 9 have filed their detail written statement to the case of the plaintiffs. Thereafter, this Court has framed the issues and on the basis of pleadings and issues, the plaintiffs have led their evidence and plaintiffs No.1 and 2 in their evidence have given

important admissions in favour of defendants. Under such circumstances, the amendment of plaint and including the proposed properties does not arise at all. Further the defendant No.9 stated that, the I.A.No.XIII filed by the plaintiffs is not maintainable as they have not made out any justifiable grounds to include the suit properties and if the proposed amendment is allowed, it will prejudice the defendants and thereby they will be put to irreparable loss and hardship. Therefore, with these among the other grounds defendant No.9 prayed for dismissing the I.A.No.XIII.

5. Further the defendant No.7 has filed objections to the I.A.XIII and XIV and contended that, the I.A. filed by the plaintiffs are false and not maintainable under law. It is stated that plaintiffs have not at all shown any justifiable reasons for amendment of plaint and producing the proposed documents. Further it is stated that, in this case already evidence of plaintiffs and defendant No.7 is over and thereafter the witnesses are recalled and further cross-examined by the parties and at this stage, the plaintiffs have filed application for amendment of plaint with an intention to give harassment to the defendants and to fill up lacuna to the case. Further, the defendant No.7 contended that the

plaintiffs have not made out any reasons for production of documents in delay manner. Further it is alleged that plaintiffs intentionally have not included proposed properties in this case and now the plaintiffs have come up with applications stating that they have not included said properties through oversight which is not based on cogent reasons. Therefore, defendant No.7 stated that if the applications are allowed they will be put to irreparable loss and hardship. Hence, defendant No.7 prayed for dismissing the I.A.No.XIII and XIV.

6. Heard both the sides.
7. The brief points which arise for my consideration are:-
 1. *Whether the plaintiffs have made out sufficient grounds to amend the plaint for adding the 'B' schedule properties as per IA No.XIII filed under Order VI Rule 17 of Civil Procedure Code?*
 2. *Whether the plaintiffs have made out sufficient grounds for the production of documents as per IA No.XIV filed under Order VII Rule 14 of Civil Procedure Code?*
 3. *What order?*

8. My findings on the above points are as follows:-

1. In the affirmative
2. In the affirmative
3. As per final order for the following:-

REASONS

9. **Points No.1 & 2:** Admittedly, the plaintiffs have filed this suit for the relief of partition and separate possession against the defendants. It is the case of plaintiffs that, propositus Irappa and his wife Avakka have got 5 children and all the said five children are died leaving behind the present plaintiffs and the defendants as their legal heirs. Further, the plaintiffs contended that, they along with the defendants constituted joint Hindu family and suit schedule properties are their joint family ancestral properties. The plaintiffs have got 1/5th share in the suit schedule properties and till today no partition effected in between the plaintiffs and the defendants. However, the defendants taking the disadvantage for their names appearing in the suit schedule properties causing obstruction for the joint possession and enjoyment of the suit properties of the plaintiffs. Hence, the plaintiffs filed this suit. Upon service of suit summons, the defendants appeared through their

respective counsels and denied the case of the plaintiffs. In their written statement, the defendants specifically contended that, already partition taken place in the joint family of the plaintiffs and the defendants and they are all living separately. Hence, they prayed for dismissal of the suit. Thereafter, this court framed the issues and the plaintiffs have adduced the evidence of PW.1 & 2 and on the other hand, the defendants have also examined DW.1 in support of their contentions. Now, the case is fixed for cross-examination of DW-1. At this stage, the plaintiffs have filed these IA No.XIII under VI Rule 17 Civil Procedure Code, for amendment of plaint and for adding suit 'B' schedule properties in plaint and IA No.XIV under Order VII Rule 14 R/w Section 151 of Civil Procedure Code, for production of documents and. By way of amendment, the plaintiffs want to add the proposed 'B' schedule properties in the plaint schedule as under :

Schedule 'B' Properties : The plaint 'B' schedule properties are house properties situated at Gudas village in Hukkeri taluk bearing item No.1 to 4 as follows :

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2	57	□□□	□□□□	5,00,000/-
3	164	□□□	□□□□	5,00,000/-
4	165	□□□	□□□□	5,00,000/-

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Further the plaintiffs want to amend the 5th line in para No.1 of page No.3 as follows :

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10. The advocate for plaintiffs argued that, the proposed amendment is very much necessary to the plaint as the proposed B schedule properties are also joint family properties of plaintiffs and defendants. The advocate for plaintiffs stated that, at the time of filing the suit, by oversight the said properties are not included in this case and including the said properties and by amending the plaint is just and necessary. Further, the advocate for plaintiffs contended that, the proposed amendment is only a formal amendment and, it will not change the nature of suit or introduce any new cause of action. Hence, he prayed for allowing the applications.
11. On the other hand, the learned advocates for defendants No.7 and 9 have vehemently argued that, at this stage amendment to plaint is not permissible under law. Further, it is submitted that, the plaintiff has not taken any steps for amending the plaint and for including the properties since 2017 and now present case is fixed for cross examination of DW-1 and the plaintiffs have not taken any steps for including the property well within time and now at this belated stage, the plaintiffs have filed these false applications, which are not at all maintainable. Now the plaintiffs come up with this false application to

give harassment to the defendants. It is stated that, now in the case pleadings are completed and now plaintiffs without having any right or interest over the proposed suit properties have filed this false applications and at this stage amendment to plaint is not permissible under law. Accordingly, the advocate for defendants prayed for dismissing the application.

12. I have perused the application, objection and other connected case papers. The plaintiffs in support of their contention have produced VPC extract of the proposed suit B schedule properties VPC No.128, 57, 164 and 165. On perusal of the same, it is observed that, the proposed suit properties are standing in the names of defendant No.4 and others who are also joint family members. In this case, the plaintiffs claiming partition stating that, suit properties are the joint family properties of plaintiffs and defendants. On the other hand, the defendants admitted the relationship of the plaintiffs. The defendant No.7 in his written statement para No.3 specifically contended that, the plaintiffs have not added the proposed B schedule properties in this case and suit of the plaintiffs is bad for non-inclusion of all family properties. This court also framed the issue No.3 regarding

maintainability of suit for partial partition without including all family properties. Therefore, whether the proposed B schedule properties are joint family properties or not? and whether the plaintiffs are entitled partition and separate possession in the said suit properties or not? are some of the substantial questions to be determined at later stage. At this stage, the only facts to taken into consideration are whether the proposed amendment introduces any new cause of action and whether it changes the nature of suit. As already discussed above, the plaintiffs have sought for adding the proposed properties on the ground that, the said properties are also their family properties. When the plaint pleadings and documents are perused, the plaintiffs have pleaded necessary ingredients about the joint family and joint family properties. Therefore, for completed the adjudication of the matter in dispute, the proposed amendment is very much necessary. Further in order to minimize the litigation and to avoid multiplicity of proceedings, the present amendment to the plaint is very much necessary. In this case it is the objection of the defendants that, the amendment application is time barred and not maintainable but in this case still evidence of defendants is not concluded. Hence, I am of the

opinion that, the proposed amendment does not change the nature of the suit or introduce a new cause of action. If the applications are not allowed, the plaintiffs will be put to irreparable loss and hardship on the other hand, if applications are allowed no injustice will be caused to the defendants. However, whatever the inconvenience caused to the defendants by filing this application in delay manner can be suitably compensated by imposing proper and reasonable cost. Therefore, question of prejudice to the defendants does not arise at all. Hence, for all these reasons, I am of the opinion that, proposed amendment and production of documents deserves to be allowed. Therefore, I answer points No.1 & 2 in affirmative.

13. **Point No.3:** For the foregoing reasons I proceed to pass the following :-

ORDER

The IA No.XIII filed under Order VI Rule 17 R/w Sec.151 of Civil Procedure Code is hereby allowed on cost of Rs.200/-. And plaintiffs are permitted to make necessary amendment to the plaint and to add the 'B' schedule properties as prayed in the IA No.XIII.

Further the I.A. No.XIV filed by the plaintiffs under Order VII Rule 14 of Civil Procedure Code is allowed on cost of Rs.200/-. Accordingly, the documents produced by the plaintiffs along with IA No.XIV are received on record subject to the proof and relevancy

(Dictated to the stenographer transcribed and typed by her, corrected by me and then pronounced in open court on this 18th day of February 2025)

(Sri K.S.Rotter,)
Senior Civil Judge, Hukkeri.