

**IN THE COURT OF THE ADDL. SENIOR CIVIL
JUDGE AT JAMKHANDI**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

**Addl. Senior Civil Judge,
Jamkhandi.**

Dated: 24th Day of November 2021

OS.No.88 of 2020

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- 1.** Smt.Bourawwa w/o Channayya Math @ Ganachari.
- 2.** Smt.Sushila w/o Basavaraj Gourimath
Both are r/o Gothe.

Plaintiffs

V/s

- 1.** Smt.Mahadevi w/o Sidramayya Hiremath
R/o Mysore.
- 2.** Smt.Shobha w/o Sangayya Hiremath
R/o Dharwad.
- 3.** Smt.Neelabai w/o Vidyadhar Mamadapur
R/o Vijayapur.
- 4.** Sri.Arun s/o Basavaraj Gourimath R/o Gothe.

Defendants

IA.No.7

Smt.Mahadevi w/o Sidramayya Hiremath
R/o Mysore & Ors.

....Applicants/ Defendants

V/s

Smt.Bourawwa w/o Channayya Math @ Ganachari,
R/o Gothe & Anr.

.....Opponents /Plaintiffs

:ORDER ON IA.No.7; u/O 6 Rule 17 R/w Sec.151 CPC:

Defendants-2 & 3 moved this application seeking permission to amend the written statement by adding para-7(a) and to add the relief in counter claim.

Proposed amendment reads thus;

7(a). "ದಿನಾಂಕ ೧೧.೦೮.೨೦೨೦ ರಂದು ವಾದಿಯರು ಹಾಗೂ ಪ್ರತಿವಾದಿ ನಂ.೪ ಮತ್ತು ಗ್ರಾಮದ ಹಿರಿಯರು ಸೇರಿ ಅಪಸಾತ್ ವಾಟ್ಸಿ ಪತ್ರ ತಯಾರಿಸಿ ವಾಟ್ಸಿ ಪತ್ರದ ಪ್ರಕಾರ ಎಲ್ಲಾ ಹಿಸ್ತೆದಾರರಿಗೆ ಹಣ ವ ಕೆಲವು ಜಮೀನುಗಳ ಹಾಗೂ ಮನೆಗಳ ಹಂಚಿಕೆಮಾಡಿದ್ದು ಅದೇ ದಿನದಿಂದ ಆಯಾ ಸ್ವತ್ತುತಳ ಸ್ವಧೀನತೆಯನ್ನು ಸಹ ಪ್ರತೇಕವಾಗಿ ಎಲ್ಲಾ ಹಿಸ್ತೆದಾರರಿಗೂ ಒಪ್ಪಿಸಿದ್ದು ಅಂದಿನಿಂದ ಎಲ್ಲಾ ಹಿಸ್ತೆದಾರರು ತಮಗೆ ಬಂದ ಆಸ್ತಿಗಳಲ್ಲಿ ಶಾಂತಯುತವಾಗಿ ತಮ್ಮ ತಮ್ಮ ಮಾಲ್ಕಿ ಹಕ್ಕುವ ಕಬ್ಬಾಹೊಂದಿ ಸಾಗುವಳಿ ಮಾಡುತ್ತಾ ಬಂದಿದ್ದಾರೆ. ಆದರೆ ಪ್ರತಿವಾದಿ ನಂ.೧ ರಿಂದ ೩ನೇ ಪ್ರತಿವಾದಿಯರಿಗೆ ಅವರ ಪೋತಿ ತಂದೆಯ ಅಘೋಚರವಾದ ಸಾಕಷ್ಟು ಚರ ಹಾಗೂ ಸ್ಥಿರಾಸ್ತಿಗಳನ್ನು (Movable and Immovable Properties) ಮರೆಮಾಚಿ ವಾದಿಯರು ಹಾಗೂ ಪ್ರತಿವಾದಿ ನಂ.೪ನೇದವರು ತಮ್ಮ ಸ್ವಾಧೀನತೆಯಲ್ಲಿ ಇಟ್ಟುಕೊಂಡು ಪ್ರತಿವಾದಿ ನಂ.೧ ರಿಂದ ೩ನೇದವರಿಗೆ ಮೋಸಮಾಡಿದ್ದು ಮತ್ತು ಇತ್ತಿತ್ತಲಾಗಿ ೧ನೇ ಪ್ರತಿವಾದಿಯನ್ನು ತಮ್ಮ ಕಡೆಗೆ ಸೇರಿಸಿಕೊಂಡಿದ್ದು ಸದರಿ ಆಸ್ತಿಗಳ ಬಗ್ಗೆ ಸಹ ಹಿಸ್ತೆಗಾಗಿ ಈ ದಾವೆಯಲ್ಲಿ ಪ್ರತಿವಾದಿಯರು ಪ್ರತಿಪಾದಿಸುತ್ತಾರೆ. ಸದರಿ ಅಪಸಾತ್ ವಾಟ್ಸಿಯ ಮೂಲ ದಾಖಲೆ ಹಾಗೂ ಪ್ರತಿವಾದಿ ನಂ.೧ ರಿಂದ ೩ನೇ ದವರು ಸಹಿ ಮಾಡಿದ ೨೦೦.೦೦ ರೂ ಗಳ ಖಾಲಿ ಬಾಂಡ ಪೆಪರ ವಾದಿಯರ ಮತ್ತು ೪ನೇ ಪ್ರತಿವಾದಿಯರ

ಸ್ವಾಧೀನತೆಯಲ್ಲಿದ್ದು ಪ್ರತಿವಾದಿ ನಂ.೧ ರಿಂದ ೩ನೇ ದವರಿಗೆ ಚಿರಾಕ್ಷ ಪತ್ರ ನೀಡಿದ್ದಾರೆ". ಅಂತಾ ಬರೆದ ಸಂಗತಿಗಳನ್ನು ಪ್ರತಿವಾದ ಪತ್ರದಲ್ಲಿ ಸೇರಿಸಿ ದುರಸ್ತಿ ಮಾಡಲಿಕ್ಕೆ

ಹಾಗೂ

ಪ್ರತಿವಾದಿ ನಂ.೨ ಮತ್ತು ೩ನೇದವರು ಸಲ್ಲಿಸಿದ ವಿರುದ್ಧ ಮಾಗಣೆ (Counter claim) ಪ್ಯಾರಾ ನಂ.೩ನೇದರ E. ಖಂಡಿಕೆಯ ಅಂತ್ಯಕ್ಕೆ ಅಂದರೆ ೩೧,೫೦,೦೦೦=೦೦ ಗಳು ಅನ್ನುವುದರ ಮುಂದೆ ೨೦೨೦ ರಿಂದ ದಾವಾ ನಿಖಾಲಿಯಾಗಿ ಸದರಿ ಪ್ರತಿವಾದಿಯರಿಗೆ ಕಿರಾಣಿ ವ್ಯವಹಾರದಿಂದ ಬರತಕ್ಕ ಧರ್ಮ್ಯಾನ ಉತ್ಪನ್ನ (mense profits) ಕೊಡಿಸಬೇಕು. ಅದೇ ಪ್ರಕಾರ ಪೋತಿ ಪ್ರತಿವಾದಿಯರ ಪೋತಿ ತಂದೆಯ ಇನ್ನಿತರ ಸ್ವತ್ತುಗಳಿಂದ ಬರತಕ್ಕ ಧರ್ಮ್ಯಾನ ಉತ್ಪನ್ನ (mense profits) ಕೊಡಿಸಲಿಕ್ಕೆ ಅನುವು ಇರಬೇಕು". ಅಂತಾ ಸೇರಿಸಿ ತಿದ್ದುಪಡಿ ಮಾಡಲಿಕ್ಕೆ ಆದೇಶ ಮಾಡಬೇಕು ಅಂತಾ ಬರಕೊಂಡ ವಿನಂತಿ ಅರ್ಜಿ.

2. Plaintiffs objected the application by filing objection statement.

3. Heard arguments.

4. Following point arises for consideration.

Whether the proposed amendment is necessary for the complete adjudication of the matter?

5. Answer to the above point is in **affirmative** for the following;

REASONS

6. At the outset; suit is filed for partition and separate possession of plaintiffs' 1/5th share each in the suit properties by asserting that; propositus Channayya died leaving behind wife and daughters (plaintiffs & defendants-1 to 3); they constituted joint family; they are in joint possession and there is no severance of joint status. Suit properties are ancestral joint family properties of propositus, as such they got 1/5th share each. Propositus was running provisional shop in VPC.No.192 of Gothe village, the defendant-4 behind the back of plaintiffs and other defendants got the license of provisional shop in his name, as such he is arrayed as a party to suit. Said shop belongs to plaintiffs & defendants-1 to 3. They demanded partition but to no use, hence suit is filed.

7. Defendants-2 & 3 resisted the suit by filing written statement seeking counter claim. They admits

the genealogy shown in the plaint and also the nature of suit properties. But they contended that; family is having other properties, which are not included in the suit. After filing of suit they came to know about the license of provision shop obtained by the defendant-4 behind the back of plaintiffs & other defendants, as such his (D4) presence is necessary for effective adjudication. After death of propositus; the plaintiff-2 & her son (D4) colluding together & without disclosing the particulars of family properties, income of provision shop, agricultural income & fixed deposit of Rs.One Crore, they hurriedly got prepared partition deed (Apsath Watni) to defraud the legitimate share of defendants-1 to 3. Apart from this they also obtained signatures of defendants-2 & 3 on blank stamp paper of Rs.200/-. Hence, they prayed to dismiss the suit.

8. When the matter was set down for filing of written statement by defendant-4; the defendants-2

and 3 filed the application at hand for the relief stated supra by stating that; at the time of filing written statement by mistake or by oversight they failed to narrate the facts stated in the proposed amendment, which are necessary for effective adjudication of lis.

9. Plaintiffs objected the application by contending that; suit is filed for partition, as no partition either oral or written is taken place between them and defendants-1 to 3. Therefore, question of partition stated by defendant-3 in the proposed amendment does not arise. They denied the alleged partition deed dated 11.08.20. Defendants-2 and 3 are not in possession of suit lands. If amendment is allowed there is likelihood of dispossession of plaintiffs from suit lands. Defendants-2 and 3 already filed written statement, wherein they contended that there is no partition taken place between them and plaintiffs by metes and bounds in the suit properties. Now they

sought to amend the written statement to state that partition took place between them and plaintiffs after death of Channayya before the elders. Amendment sought is entirely different from the original stand taken by them. This Court already dismiss application u/O 39 Rule 1 and 2 filed by them in respect of lands bearing RS.No.233/1 (10As 8Gs) and RS.No.447/2/1 (9As 29Gs). Now to fill up the lacuna the amendment is sought which is not permissible under law. Hence, they pray to reject the application.

10. It is well settled principle that; all amendments ought to be allowed which satisfy two conditions viz., not working injustice to the other side and of being necessary for the purpose of determining the real questions in controversy between the parties.

11. Defendants-2 & 3 sought to amend the written statement to plead about the partition taken place

under Apsath Watni deed dated 11.08.20. On the contrary plaintiffs denied the said partition. Whether joint status severed or not is a fact in issue and same is to be adjudicated after full-fledged trial. Adjudication of said issue is absolutely necessary to set at rest the real controversy between the parties to lis. This fact manifest that proposed amendment is necessary for the complete and effective adjudication of real dispute between the parties to suit. If said amendment is not allowed the defendants-2 & 3 will be subjected to hardship because it amounts to denial of opportunity to put forth their defence and also it is against to the principles of natural justice. On the other hand if the amendment is allowed no prejudice will be caused to the plaintiffs because the entire burden of proving severance of joint status is on the defendants-2 & 3.

12. Plaintiffs argued that; defendants-2 & 3 in their written statement contended that there is no division

in the family and know they are urging division took place, as such amendment to raise inconsistent pleas is not permissible. This contention is not tenable because; it is well settled that amendment of plaint is different from amendment of written statement and there is permissibility of allowing defendant to raise inconsistent pleas. Inconsistent defences can be raised although plaintiff cannot plead inconsistently.

13. In the case at hand; stage of suit is for filing of written statement of defendant-4. Issues are not settled. Thus, trial is not started and the proviso to Rule 17 of Order 6 does come into picture. In the light of discussion supra and the necessity of proposed amendment to resolve the real dispute between the parties; above point is answered in affirmative and proceeds to pass the following;

ORDER

IA.No.7; under Order 6 Rule 17 CPC filed by the defendants is allowed.

Defendants are permitted to amend the written statement.

No order as to costs.

(Dictated to the Stenographer and transcribed by her, corrected and initialed by me and then pronounced in the open Court on 24.11.21).

Sd/-

(A.SAMIULLA)

Addl. Senior Civil Judge

Jamkhandi.

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