

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC., HIRIYUR

Present :- Smt. Sujatha Suvarna B., B.Com., LL.B.,

Senior Civil Judge and JMFC, Hiriya

Dated this the 24th Day of September 2024

O.S. No. 39/2014

PLAINTIFFS :

1. S.Y.Thippeswamy
S/o late Yalagattappa,
Aged about 60 years,
2. Laxmakka
W/o. Chowdi Hanumanthappa,
Aged about 70 years,
3. Rajanna S/o.
Late Kenchappa,
Aged about 50 years,
4. Hanumanthappa
S/o Late Kenchappa,
Aged about 47 years,

All are an agriculturist,
R/o Sidlayyanakote Village,
Dharampura Hobli,
Hiriyuru Taluk,

V/s

DEFENDANTS :

1. Laxmakka
W/o.Late Hosurappa,
Aged about 56 years,
2. Thippeswamy
S/o. Late Hosurappa,
Aged about 25 years,
3. Manjanna
S/O late Hosurappa,
Aged about 20 years,

4. Neelamma
W/O Late Naganna,
Aged about 55 years,
5. Kumar
S/O Late Naganna,
Aged about 30 years,
6. Anantha
S/O Late Naganna,
Aged about 25 years,
7. **Ranganna S/o Late Hanumanthappa,
Dead by his LR'S**
 - (a) Kalyanamma
D/O Late Ranganna @Rangappa
W/O Ranganna,
Aged about 36 years,
 - (b) Veenamma
D/O Late Ranganna @Rangappa
W/O Kariyanna,
Aged about 30 years,
 - (c) Harisha
S/O Late Ranganna, @Rangappa,
Aged about 26 years,
 - (d) Vasanthamma
D/O Late Ranganna @Rangappa,
W/O Vasanthappa,
Aged about 19 years,

All are Agriculturists,
R/O Gorlathu village
Challakere Taluk,
(The Defendant No.7(a) to (d) are
impleaded as per court order
dated; 16.1.2020)
8. Gangamma
W/O Ganganna,
Aged about 23 years,

R/O Mahanthapura village,
Kalyanadurga Taluk,
Ananthapura District

9. Sharadamma
W/O Linganna,
Aged about 45 years,
R/O Gorlattu village,
Challakere Taluk,
 10. Sunandamma
W/O Lingappa,
Aged about 40 years,
R/O Gorlattu village,
Challakere Taluk
 11. Kenchappa
S/O Madure Hanumanthappa,
Dead by his LR's
- (a) Guruswamy
S/O Late Kenchappa,
Aged about 50 years, Agriculturist,
R/O Shidlayyana Kote village,
Hiriyur Taluk,
 - (b) Laxmidevi
W/O Late Rajanna,
Aged about 45 years, Coolie,
R/O Shidlayyana Kote village,
Hiriyur Taluk,
 - (c) Kenchamma
D/O Late Rajanna,
W/O Shekhara @Somashekhara,
Aged about 26 years, Cooli,
R/O Sangenahally village,
Hiriyur Taluk,
 - (d) Vasanthamma
D/O ate Rajanna
Aged about 24 years, Cooli,
R/O V.V Pura village,

Hiriyur Taluk,

- (e) Vasantha
S/O Late Rajanna,
Aged about 15 years, Student,
Minor Represented by his Natuaral
Gaurdian His Mother Laxmidevi i.e.,
Defendant No.11(b).
R/O Shidlayyana Kote village,
Hiriyur Taluk.
- (f) Jayamma W/O
Aged about 46 years, Coolie,
R/O Shidlayyana Kote Village,
Hiriyur Taluk,
- (g) Jayanna
S/O Late Kenchappa
Aged about 44 years,
Coolie,
14. Ramanna
S/O Madure Hanumanthappa,
Aged about 55 years,
Chikka Madure village,
Challakere Taluk,
15. Rudramma
W/O Late Thippeswamy,
Aged about 50 years,
16. Manjunatha
S/O Late Thippeswamy,
Aged about 26 years,
17. Suresha
S/O Late Thippeswamy,
Aged about 22 years,

The defendants No.15 to 17 are
R/O 11th Cross, Sadiq Nagara,

I.D.U.P. Layout,
Chitradurga Town

RANK OF THE PARTIES ON IA NO.23

Applicants / defendant No.13(H) : S.L Hanumanthegowda

V/s

Opponent / plaintiff : Thippeswamy & others

i	Provision under which the application is filed	IA No.2 U.O 6 R. 17 of CPC
ii	Relief sought for	amendment
iii	The date on which the application is filed	22.07.2024
iv	Number of the application	1
v	The date on which the objections are filed by different opponent	01.08.2024

ORDERS ON IA NO.23

The defendant NO.11 to 17 have filed IA No.23 under order 6 Rule 17 rw Sec. 151 of CPC and permitted them to amend the written statement as stated in the application.

In support of the application the defendant No.13(H) has filed affidavit and stated that, some of the material facts which regarding to the contentions were no pleaded in their written statement and proposed amendment is just and necessary for the fair

adjudication of the entire dispute between the parties and also to avoid multiplicity of proceeding. The amendment sought for will not change nature of the suit and it will not cause any new cause of action. Hence, prayed to allow the application.

2. Per contra the plaintiff has filed objection and stated as follows:

The plaintiffs have filed the suit against the defendants for declaration to declare that, they and defendant No.1 to 10 are the joint owners in possession and enjoyment of the suit schedule property. The defendant No.4 to 17 and defendant No.1 to 13 are came near to the schedule land and attempted to cut and remove the trees situated there in by denying title of the plaintiffs own the suit schedule properties. The LR's of Madhure Hanumanthappa namely Puttamma, Gurushanthamma and Shanthamma have not denied the title of the plaintiffs over the suit schedule property and they have not interfere with peaceful possession and enjoyment over the suit schedule property. As such the plaintiff have not arrayed them as party to the suit.

Moreover the cause of action has not arose against the said persons. Hence, the said persons are not necessary and proper parties

to the suit. The suit is for the year 2014 after lapse of nearly 10 years the defendant No.11 to 17 have filed the instant application without assigning any proper and satisfactory reasons. Hence, prayed to reject the application.

3. Heard the arguments.
4. The points that arise for my consideration is as follow :
 1. Whether the defendants have made out sufficient grounds to amend the written statement ?
 2. What order ?
5. My answer to the above points are as follows :
 - Point No.1 - In the affirmative
 - Point No.2 - As per the final order,
for the following

REASONS

6. Point No.1:

It is the contention of the defendants that proposed amendment is necessary for the fair adjudication of the entire dispute between the parties and amendment will not change the nature of the suit. It is the contention of the plaintiff that, defendant No.11 to 17 are the proper and necessary parties to the suit and other legal heirs of Madure Hanumanthappa have not denied the title of the plaintiff over the suit schedule property and they have not interfere with the

peaceful possession and enjoyment over the suit schedule properties. Hence, question of impleading them as party to the suit does not arise.

7. Under order 6 Rule 17 of CPC, reads as :

“As per order VI Rule 17 the court may at any stage of proceeding allow, either party to alter or amend his pleading in such term as may be just and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties”.

Order 6 Rule 17 of CPC empowered the court to permit the parties to amend their pleading. It is established principle that the amendment application has to be liberally dealt with and whenever it is made out that amendment is necessary to elucidate the matter in dispute and to avoid the multiplicity of the proceedings then such application has to be allowed.

8. Admittedly, the plaintiff has filed this suit against the defendant for the relief of declaration and permanent injunction . It is the contention of the defendant that, suit is bad for non joinder of the necessary party. In the plaint the plaintiff stated that, defendant No.11 to 17 and one Thippeswamy are the sons of one Madure

Hanumanthappa and he has not the member of joint family consisting of Hosurappa and in the RTC his name entered with the shara kulase vibaga MR.No.6/82-83 when he is not a member of the joint family question of release or effecting partition does not arise.

9. As per the contention of the defendant legal heirs of the deceased Mudere Hanumanthappa were not made as party to this suit and suit is bad for non joinder of necessary party. To decide all these facts full pledge trial is required. Being a trial court it is just and necessary to give sufficient opportunity to the defendants to take defense. In the plaint the plaintiffs clearly stated that, without any document of title the name of the Madure Hanumanthappa is entered in the revenue authority. Hence, proposed amendment is just and necessary to decide the controversy between the parties. Admittedly the case was posted for defendant evidence. Hence, considering the fact and circumstances and in the ends of justice 3it is fit case to allow the application with cost. Accordingly point No.1 is answered in the Affirmative.

10. Point No.2 :- In view of the findings on the above point, I proceed to pass the following:

ORDER

IA No.23 filed by the defendants under Order VI Rule 17 R/w Sec.151 of CPC is hereby allowed with cost of Rs.1, 500/-.

(Dictated to the Stenographer directly on the computer, corrected, initialed and then pronounced by me in open court on this 24th September 2024)

(SUJATHA SUVARNA B.),
Senior Civil Judge & JMFC.,
Hiriyur.