

KACD420017852021



IN THE COURT OF THE PRL CIVIL JUDGE

AT HOLALKERE

Present: Sri.UMESHA, M.P., B.A.L., LL.B.
PRL. CIVIL JUDGE & JMFC,
HOLALKERE

DATED: ON THIS THE 07th DAY OF AUGUST - 2023

ORIGINAL SUIT No. 239 / 2021

- PLAINTIFFS :**
1. **GOVINDAPPA** S/o Late.Ajjappa,
Aged about 55 years,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
 2. **SIDDAPPA** S/o Late. Ajjappa,
Aged about 50 years, Occ: Agriculturist,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
 3. **THIMMAPPA** S/o Late. Avalappa,
Aged about 62 years, Occ: Agriculturist,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
 4. **GOVINDAPPA** S/o Late. Avalappa,
Aged about 45 years, Occ: Agriculturist,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
 5. **MANJAPPA** S/o Late. Nagappa,
Aged about 51 years, Occ: Agriculturist,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
 6. **RAMAPPA** S/o Late. Nagappa,
Aged about 49 years, Occ: Agriculturist,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
 7. **GIRIYAPPA** S/o Late. Govindappa,
Aged about 68 years, Occ: Agriculturist,.

R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
(BY PLEADER SRI.N.H.S)

-V/s-

- DEFENDANTS** : 1. **THOMANNA S/o** Late. Chikkappa
Aged about 54 years, Occ: Agriculturist,.
R/o Gunjiganuru Gollarahatti Village,
B.Durga Hobli, Holalkere Taluk.
2. **NAGAPPA S/o** Late. Chikkappa
Aged about 50 years, Occ: Agriculturist,.
R/o Gunjiganuru Gollarahatti Village,
B.Durga Hobli, Holalkere Taluk.
3. **T. RAMASWAMY S/o** Late.Thimmappa,
Aged about 55 years, Occ: Teacher & Agriculturist,
R/o Gangasamudra Village,
Ramagiri Hobli, Holalkere Taluk,
Chitradurga District.
(BY PLEADER SRI.G.G.R FOR DEFENDANT NO.1&2)
(DEFENDANT NO.3 PLACED EX-PARTE)

PARTIES TO I.A.NO.7

- APPLICANTS /DEFENDANTS:** 1. **THOMANNA S/o** Late. Chikkappa
Aged about 54 years, Occ: Agriculturist,.
R/o Gunjiganuru Gollarahatti Village,
B.Durga Hobli, Holalkere Taluk.
2. **NAGAPPA S/o** Late. Chikkappa
Aged about 50 years, Occ: Agriculturist,.
R/o Gunjiganuru Gollarahatti Village,
B.Durga Hobli, Holalkere Taluk.
(BY PLEADER SRI.G.G.R. FOR DEFENDANT NO.1&2)

-V/s-

- OPPONENTS/PLAINTIFFS:**1.**GOVINDAPPA S/o** Late.Ajjappa,
Aged about 55 years,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
2. **SIDDAPPA S/o** Late. Ajjappa,
Aged about 50 years, Occ: Agriculturist,.
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.

3. **THIMMAPPA** S/o Late. Avalappa,
Aged about 62 years, Occ: Agriculturist.,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
4. **GOVINDAPPA** S/o Late. Avalappa,
Aged about 45 years, Occ: Agriculturist.,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
5. **MANJAPPA** S/o Late. Nagappa,
Aged about 51 years, Occ: Agriculturist.,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
6. **RAMAPPA** S/o Late. Nagappa,
Aged about 49 years, Occ: Agriculturist.,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
7. **GIRIYAPPA** S/o Late. Govindappa,
Aged about 68 years, Occ: Agriculturist.,
R/o Dummi Gollarahatti Village,
Ramagiri Hobli, Holalkere Taluk.
(BY PLEADER SRL.N.H.S)

ORDERS ON I.A.NO.VII

The applicants / defendants No.1 & 2 have filed I.A.No.7 U/o 6 rule 17 R/w Sec.151 of CPC praying to amend their written statement as per proposed amendment, in the interest of justice and equity.

Proposed amendment:

“In the written statement page No.4, in 2nd line, the word Smt.Thimmakka is the daughter of Smt.Kenchamma has to be inserted and the marriage of the said Smt.Thimmakka D/o Smt.Kenchamma was solemnized with one Chikkappa of Gunjiganur Gollaharahatty has to be read and interpret”.

2. In support of the application, the defendant No.1 has filed sworn affidavit contending that, the plaintiffs have filed the above case against them for declaration, partition and separate possession with respect to the suit schedule properties. It is further stated that, the defendants have contested the case by filing their written statement. Due to the typographical error and oversight mistake, the relationship of the parties were wrongly entered in the page No.4, in 2nd line of the written statement of the defendant No.1& 2. Hence, it is necessary for them to amend their written statement as per the proposed amendment. If the amendment application is not allowed, they will be put to irreparable loss. Hence, it is necessary for them to amend as mentioned in the application schedule in the interest of justice.

3. Per Contra, the learned counsel for the plaintiffs has filed objections contending that, the application filed by the defendants is not bonafide and not maintainable in law. It is further contended that, the defendants have stated the false facts in the application enclosed affidavit and all the contents of said affidavit are hereby denied as false and baseless. It is further contended that, the contents stated in the application and its enclosed affidavit is all after thought one. It is further contended that, the proposed amendment will changes the nature of suit. It is further contended that, now the case is posted for cross of PW-1. It is further contended that, the defendants have filed this application just for prolonging the case with an intention to cause irreparable injury and loss

to the plaintiffs. Hence, the application of the defendant No.1 & 2 cannot be allow. Hence, prayed to reject the application.

4. Heard on behalf of plaintiffs and defendants No.1 & 2 on IA No.7, perused the records placed before the court.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1. *Whether the applicants / defendants No.1 & 2 have made out the grounds to allow the I.A.No.VII, at this stage?*

2. *What order?*

6. My answer to the above points for consideration are as under:

Point No.1: In the AFFIRMATIVE

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

REASONS

POINT NO.1 :-

7. The plaintiffs have filed this suit against the defendants for the relief of declaration and partition and separate possession with respect to the suit schedule properties.

8. The Applicants / defendants have filed IA No.7 under order 6 Rule 17 R/w Sec.151 of Civil Procedure Code praying to amend their written statement as per the proposed amendment.

9. According to defendant No.1, in the accompanying affidavit it is stated that, the plaintiff has filed the above suit against the defendants for the relief of declaration and partition and separate possession with respect to the suit schedule properties. It is further stated that, the defendants have contested the case by filing their written statement. Due to the

typographical error and oversight mistake, the relationship of the parties were wrongly entered in the page No.4, in 2nd line of the written statement of the defendant No.1& 2. Hence, it is necessary for them to amend their written statement as per the proposed amendment. If the amendment application is not allowed, they will be put to irreparable loss. Hence, it is necessary for them to amend as mentioned in the application schedule in the interest of justice.

10. Per contra, the plaintiffs have filed their objection to the said IA No.7 contended that, the application is not maintainable in law or on facts and circumstances of the case and it is only simply to drag on the proceedings. It is further contended that, the defendants have stated the false facts in the application enclosed affidavit and all the contents of said affidavit are hereby denied as false and baseless. It is further contended that, the contents stated in the application and its enclosed affidavit is all after thought one. It is further contended that, the proposed amendment will changes the nature of suit. It is further contended that, now the case is posted for cross of PW-1. It is further contended that, the defendants have filed this application just for prolonging the case with an intention to cause irreparable injury and loss to the plaintiffs. Hence, the application of the defendant No.1 & 2 cannot be allow. Hence, prayed to reject the application.

11. In this regard Order 6 rule 17 of CPC must be looked in to ...

Order 6 rule 17 of CPC... Amendments of pleadings:-

The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

12. After reading the above procedural aspect now it is very clear that, the court shall not allow the amendment of pleadings after the commencement of trial but party could not raised the same in spite of due diligence before commencement of trial if party satisfied the due diligence to the court then court can allow the application even after commencement of trial.

13. The Applicants / defendants have filed IA No.VII under order 6 Rule 17 of Civil Procedure Code praying to amend their written statement as per the proposed amendment.

14. The plaintiffs have filed this suit against the defendants seeking for declaration, partition and separate possession of plaint schedule properties. The defendant No.1 & 2 have contested the suit by filing their written statement. This court has framed the issues on 16.06.2022. When the case is set down for cross of PW-1, this present application being filed seeking amendment of written statement. No doubt it is true that, the evidence of the plaintiffs is not yet completed. But on perusal of proposed

amendments it is clear that, the defendants want to correct the relationship of the parties. Under these circumstances, the proposed amendments are just and necessary to adjudicate the real controversy between the parties finally and effectively. If the application is allowed it would meet the ends of justice. Other wise chances of multiplicity of proceeding including wastage of cost and time of both the litigants cannot be ruled out. Therefore, to advance the cause of justice, I proceed to following:

Point No.2 :

15. For the aforesaid reasons, discussions made above, I proceed to pass the following:

ORDER

IA.No.7 filed by the defendant No.1 & 2 under the provisions of Order 6 Rule 17 of CPC is hereby allowed.

No cost.

Learned counsel for the defendant No.1 & 2 is permitted to carry out necessary amendments and furnish the amended written statement.

(Dictated to the Stenographer directly on computer, typed by her, the same is corrected and then pronounced by me in the open court on this the 07th day of AUGUST – 2023)

(UMESHA M.P)
Prl.Civil Judge,
Holalkere