



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 02nd DAY OF AUGUST - 2024

ORIGINAL SUIT No. 305 / 2021

PLAINTIFFS :

1. **KUMARASWAMY** S/o Late.Murthappa
Aged about 26 years, Occ: Agriculturist,
R/o Hosanagara Extension, Chikkajajur Village,
B.Durga Hobli, Holalkere Taluk.
2. **VEERESHA** S/o Late.Murthappa,
Aged about 24 years, Occ: Agriculturist,
R/o Hosanagara Extension, Chikkajajur Village,
B.Durga Hobli, Holalkere Taluk.
3. **SMT. SUSHEELAMMA** S/o Late.Murthappa,
Aged about 52 years, Occ: Agriculturist,
R/o Hosanagara Extension, Chikkajajur Village,
B.Durga Hobli, Holalkere Taluk.
(BY PLEADER SRI.M.N.C)

-V/s-

DEFENDANTS :

1. **SMT. MANJAMMA** W/o Late.Thippeshappa,
Aged about 55 years, Occ: Coolie,
R/o Infront of Government Hospital,
Hosadurga Town and Taluk.
2. **SMT.GIRIJAMMA** W/o Venkateshappa,
D/o Lata Hanumanthappa, Aged about 47 years,
R/o Arekere Colony Village, Hebballi,
Honnali Taluk, Davanagere District.
3. **ANJINAPPA** S/o Late.Hanumanthappa,
Aged about 45 years, Occ: Mason worker,
R/o Behind Old Canara Bank, Chikkajajur Village,
B.Durga Hobli, Holalkere Taluk.



4. **SMT.ANITHA** W/o Anjinappa,
Aged about 40 years, Occ: Homemaker,
R/o Behind Old Canara Bank, Chikkajajur Village,
B.Durga Hobali, Holalkere Taluk.
5. **SMT.RATHNAMMA** W/o Rajappa,
D/o Lata Hanumanthappa, Aged about 43 years,
R/o Vaddarahatty Chikkajajur Village,
B.Durga Hobli, Holalkere Taluk.
(DEFENDANT NO.1, 2 & 5 PLACED EXPARTE)
(BY PLEADER SRI.G.G.R. FOR DEFENDANT NO.3 & 4)

PARTIES TO I.A.NO.3

- APPLICANTS/PLAINTIFFS:**
1. **KUMARASWAMY** S/o Late.Murthappa
Aged about 26 years, Occ: Agriculturist,
R/o Hosanagara Extension, Chikkajajur Village,
B.Durga Hobli, Holalkere Taluk.
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(BY PLEADER SRI.M.N.C)

-V/s-

- OPPONENTS/DEFENDANTS:**
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(DEFENDANT NO.1, 2 & 5 PLACED EXPARTE)
(BY PLEADER SRI.G.G.R. FOR DEFENDANT NO.3 & 4)

ORDERS ON I.A.NO.III

The applicants / plaintiffs have filed I.A.No.3 U/o 6 rule 17 R/w
Sec.151 of CPC praying to amend their plaint as per proposed
amendment, in the interest of justice and equity.

Proposed amendment:

*In the plaint, at page No.5, after the completion of para No.5 add
the following para as 5(a)*

*It is submitted that, the suit schedule item No.1 is the
Dharakastha land grand in favour of the Hanumanthappa S/o Venkabhoi
who is the grandfather to the plaintiffs No.1 and 2, and father-in-law to
the plaintiff No.3, and as such since the said property is the Dharakastha
land all the members of family including the plaintiffs have got right and
share over the said property. As such the said Hanumanthappa does
not have any exclusive or independent right to execute any kind of
documents in favour of any persons including the defendant No.3 by
way of alleged will. Accordingly if there is any will said to have been*



executed by the said Hanumanthappa in favour of the defendant No.3 the same is not binding upon the rights and share of the plaintiffs pertaining to suit item No.1 property. The said alleged will is a sham and bogus will and the same is a fraudulent document. Further it is also learnt that, on the guise of said fraudulent will the defendant No.3 has got executed the Reg. Gift Deed in favour of his son by name Preetham through the defendant No.3 does not have any valid right to execute the said document, and the same is not binding upon the rights and share of the plaintiffs with respect to suit item No.1 property.

In the plaint at page, No.6, after the completion of prayer para (a), ie., after the word law, add by holding that, the Regd. Will dated: 21.11.2008 obtained by the defendant No.3 and the Regd.Gift deed dated: 03.10.2010 executed by the defendant No.3 in favour of his son Preetham pertaining to suit item No.1 property does not binding upon the rights and share of the plaintiffs.

2. In support of the application, the plaintiff No.1 has filed sworn affidavit contending that, they have filed the above case against the defendants for partition and separate possession of their rightful legitimate 1/5th each share in the suit schedule properties. It is further stated that, the suit properties are the joint family properties of plaintiffs and the defendants. It is further stated that, the case is pending for consideration. It is further stated that, in this case the defendant No.3 and 4 have filed their written statement and they have contended that, the deceased Hanumanthappa has executed the Reg. Will dated: 21.11.2008 in favour of the defendant No.3 and further the defendant No.3 has



executed the Reg. Gift deed dated: 03.11.2010 with respect to suit item No.1 property and as such under changed circumstances it is just apt and necessary to amend our plaint as prayed for. Hence we have filed this application for amendment of the plaint. If the court does not allowed this application then we will be put to great hardship and injustice which cannot be compensated under law. And on the other hand there is no injustice will caused to the other said. Further the proposed amendment will not change the nature and character of the case and it will not introduce any new cause of action.

3. Per Contra, the learned counsel for the defendant 3 & 4 have opposed the same by filing objections to IA No.3 contending that, the present application is highly belated, malafide and is not maintainable in law. It is further contended that, the plaintiff No.1 has sworn false facts in the enclosed affidavit and all the contents of the affidavit are denied as false and baseless. It is further contended that, the prepared amendment is against the law. The specific case of the plaintiff is the suit schedule properties acquired by Hanumanthappa through there ancestors now after filing the written statement their though the property is aquired by Hanumanthappa through a Dharkas. It is further contended that, the plaintiffs have not filed any re-joinder or replay to the written statement of defendant No.3 & 4. It is further contended that, now the proposed



amendment is after thought at will be change the facts nature and character of the suit and at will introduce the new case. And the plaintiff is not entitle to proposed amendment of the application is allowed that will caused prejudice the defendant No.3 & 4 and it will falsify the previous facts of the plaint. Hence, he prayed to reject the present application / IA No.3.

4. I have heard the arguments of learned counsel for the plaintiffs and defendants on IA No.3. Perused the documents on record.

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

1. *Whether the plaintiffs have made out grounds for amendment of the plaint, at this stage?*

2. *What order?*

6. My findings to the above points are as under:

Point No.1- In the AFFIRMATIVE

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

REASONS

POINT NO.1:

7. The plaintiffs have filed the suit against the defendants seeking relief of partition and separate possession with respect to the suit properties in the year 2021.

8. The Applicants/plaintiffs have filed IA No.3 under order 6 Rule 7 of Civil Procedure Code praying to amend the plaint as per proposed amendment.



9. According to plaintiff No.1, in the accompanying affidavit it is stated that, the plaintiffs have filed this suit against the defendants for the relief of partition & separate possession with respect to the suit properties. It is further stated that, the above case is pending for consideration. It is further stated that, the suit properties are the joint family properties of plaintiffs and the defendants. It is further stated that, the case is pending for consideration. It is further stated that, in this case the defendant No.3 and 4 have filed their written statement and they have contended that, the deceased Hanumanthappa has executed the Reg. Will dated: 21.11.2008 in favour of the defendant No.3 and further the defendant No.3 has executed the Reg. Gift deed dated: 03.11.2010 with respect to suit item No.1 property and as such under changed circumstances it is just apt and necessary to amend our plaint as prayed for. Hence we have filed this application for amendment of the plaint. If the court does not allowed this application then we will be put to great hardship and injustice which cannot be compensated under law. And on the other hand there is no injustice will caused to the other said. Further the proposed amendment will not change the nature and character of the case and it will not introduce any new cause of action. Hence in order to resolve the suit in proper prospective it is very necessary to amend the plaint as stated in the



schedule to the application. Hence, it is necessary for them to amend as per the proposed amendment in the interest of justice.

10. Per contra, the learned counsel for the defendants No.3& 4 have opposed the same by filing objections to the said IA No.3 contending that, the present application filed by the plaintiffs is not maintainable in law and on facts and circumstances of the case. It is further contended that, the plaintiff No.1 has sworn false facts in the enclosed affidavit and all the contents of the affidavit are denied as false and baseless. It is further contended that, the proposed amendment is against the law. The specific case of the plaintiff is the suit schedule properties acquired by Hanumanthappa through their ancestors now after filing the written statement their though the property is acquired by Hanumanthappa through a Dharkas. It is further contended that, the plaintiffs have not filed any re-joinder or reply to the written statement of defendant No.3 & 4. It is further contended that, now the proposed amendment is after thought at will be change the facts nature and character of the suit and at will introduce the new case. And the plaintiff is not entitle to proposed amendment of the application is allowed that will caused prejudice the defendant No.3 & 4 and it will falsify the previous facts of the plaint. Hence, he prayed to reject the present application / IA No.3.



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 the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

12. Admittedly, this is a suit for partition and separate possession with respect to the suit properties.

13. The plaintiffs have filed this suit against the defendants seeking for the relief of Partition and separate possession in respect of the suit properties. When this case was posted for the evidence of plaintiffs' side, this present application being filed seeking amendment of plaint. The defendants have filed written statement and the defendants have contested the case. No doubt it is true that now the case is set down for the evidence of plaintiffs'. But on perusal of proposed amendments it is clear that, the plaintiffs want to add the details with respect to the acquisition of the suit property as per the proposed amendment. 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, the IA No.3 is liable to be allowed. Hence, I answer point No. 1 in the affirmative.

Point No.2 :

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

ORDER

IA.No.3 filed by the plaintiffs under the provisions of U/O 6 Rule 17 R/w Sec.151 of CPC is hereby allowed as prayed for.

No cost.

Learned counsel for the plaintiffs is permitted to carry out necessary amendments and furnish the amended plaint.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 02nd day of AUGUST – 2024)

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