

KACD420027642021



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT HOLALKERE

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

DATED: ON THIS THE 01st DAY OF MARCH - 2025

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 Hobali, 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.
6. **SMT. APOORWA D/o** Late.Thippeshappa,
Aged about 35 years, Occ:Coolie,
R/o Vinayaka Extension, Hosadurga Town,
Chitradurga District.
7. **NAGARAJA S/o** Late.Thippeshappa,
Aged about 27 years, Occ:Coolie,
R/o Vinayaka Extension, Hosadurga Town,
Chitradurga District.
8. **SMT. USHA D/o** Late.Thippeshappa,
Aged about 25 years, Occ:Coolie,
R/o Vinayaka Extension, Hosadurga Town,
Chitradurga District.
(DEFENDANT NO.1, 2 & 5 PLACED EXPARTE)
(BY PLEADER SRI.G.G.R. FOR DEFENDANT NO.3 & 4)
(PROPOSED DEFENDANT No.6 to 8 ABSENT)

PARTIES TO IA NO.7

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.
2. **VEERESHA S/o** Late.Murthappa,
Aged about 24 years, Occ: Agriculturist,
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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 SRLM.N.C)

-V/s-

- OPPONENTS/DEFENDANTS:** 1. **SMT. MANJAMMA** W/o Late.Thippeshappa,
Aged about 55 years, Occ: Coolie,
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(DEFENDANT NO.1, 2 & 5 PLACED EXPARTE)
(BY PLEADER SRI.G.G.R. FOR DEFENDANT NO.3 & 4)
(DEFENDANT No.6 to 8 ABSENT)

ORDERS ON IA NO.7

The applicants / plaintiffs have filed IA No.7 U/o 6 rule 17 R/w Sec.151 of CPC praying to amend the amended plaint as per the proposed amendment, by allowing this application in the interest of justice and equity.

Proposed amendment is as under:

In the amended plaint, at page No.5, in the para No.5(a), at line No.17, after the words through the add and insert father of the in that place.

In the amended plaint, at page No.6, in the prayer (a) column, at line No.6, after the words Deed Dated: 3 delete 10 add and insert 12 in that place.

In the amended plaint, at page No.6, in the prayer (a) column, at line No.6, after the words by the add and insert father of the in that place.

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 the relief of Partition & separate possession with respect of suit schedule properties. It is submitted that, the case is pending for



consideration. It is further stated that, during in the progress of the case, they have learnt through their counsel that, there is typical mistake was crept in their plaint as stated in the application schedule. It is further stated that, the said mistake is not an intentional one. Hence, this application for amendment of the plaint. If the Hon'ble court does not allowed this application then the plaintiffs will be put to great hardship and injustice which cannot be compensated under law. On the other hand, there is no injustice will cause to the other side. It is further stated that, the proposed amendment will not change the nature and character of the case and it will not introduce any new cause of action. Hence, it is necessary for them to amend the plaint as mentioned in the application schedule in the interest of justice.

3. Per contra, the learned counsel for the defendants have opposed the said IA No.7 by filing objections to the said IA No.7 contending that, the present application filed by the plaintiffs is not maintainable either in law and hence, it is liable to dismissed. It is further contended that, the plaintiff No.1 has sworn false facts in the enclosed affidavit which are all denied as false and baseless. It is further contended that, the plaintiffs have not sort the amendment of plaint and he has sort amended plaint to be amended. It is further contended that, the proposed amendment is opposed to law. It is further contended that, the proposed amendment will change the nature and character of the suit, it will introduce a new facts. It is further contended that, the plaintiffs have not sought for amendment of original plaint in view of the



same, the proposed amendment is not maintainable. Hence, they prayed for dismissal of the present application filed by the plaintiffs.

4. I have heard the arguments from the learned counsels for the plaintiff and the defendants on IA No.7 at length.

5. The following points arise for my consideration:

1. Whether the applicants / plaintiffs have made out the ground to allow the I.A.No.I, at this stage?

2. What order?

6. My answers to the above point are as follows:

Point No.1 : In the affirmative.

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

REASONS

Point No.1:

7. This suit filed by the plaintiffs against the defendants for the relief of Partition and Separate Possession over the suit schedule properties.

8. The applicants / plaintiffs have filed IA No.7 U/o 6 rule 17 R/w Sec.151 of CPC praying to amend the amended plaint as per the proposed amendment, by allowing this application in the interest of justice and equity.

9. According to the applicant / plaintiff No.1, he has filed an affidavit and stating that, they have filed the above case against the defendants for the relief of Partition & separate possession with respect of suit schedule properties. It is submitted that, the case is pending for consideration. It is further stated that, during in the progress of the case, they have learnt through their counsel that,



there is typical mistake was crept in their plaint as stated in the application schedule. It is further stated that, the said mistake is not an intentional one. Hence, this application for amendment of the plaint. If the Hon'ble court does not allowed this application then the plaintiffs will be put to great hardship and injustice which cannot be compensated under law. On the other hand, there is no injustice will cause to the other side. It is further stated that, the proposed amendment will not change the nature and character of the case and it will not introduce any new cause of action. Hence, it is necessary for them to amend the plaint as mentioned in the application schedule in the interest of justice.

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

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. 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 / plaintiffs have filed IA No.VII under order 6 Rule 17 of Civil Procedure Code praying to amend the amended plaint as per the proposed amendment.

14. The plaintiffs have filed this suit against the defendants seeking for partition and separate possession with respect to the suit properties. The defendants have contested the suit. This court has framed the issues on 10.06.2022. When the case is set down for further chief of PW-1, this present application being filed seeking amendment of plaint. No doubt it is true that, the evidence of the plaintiffs' is not yet completed. But on perusal of proposed amendment it is clear that, the plaintiffs want to correct their pleading and their case in order to prove the same. 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.

Point No.2:

15. In view of the above mentioned reason I pass the following:

ORDER

I.A.No.VII filed by the plaintiffs under order 6 rule 17 of C.P.C., is hereby allowed.

The Plaintiffs are hereby direct that amend the plaint and furnish the amended plaint.

No order as to cost.

(Dictated to the stenographer, directly on computer and corrected signed and then pronounced by me in the Open Court, dated this the 01st day of MARCH – 2025)

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