

KACM210021152018



**IN THE COURT OF THE I ADDL.CIVIL JUDGE & JMFC, AT
KADUR**

PRESENT:- SMT.AMRIN SULTANA B.A, LL.B.,

Addl. Civil Judge & JMFC, Kadur

Dated this 18th day of March, 2024

O.S.NO.477/2018

PLAINTIFF

- :**
- 1.** Smt. Asha,
D/o C.B. Bommegowda,
W/o Thirtesh,
Aged about 46 years,
 - 2.** Smt. Yashodha,
D/o C.B. Bommegowda,
Aged about 44 years,
 - 3.** Smt. Madhu,
D/o C.B. Bommegowda,
W/o Praveen Kumar,
Aged about 40 years,
 - 4.** Smt. Renuka D/o C.B. Bommegowda,
W/o Kumara, Aged about 38 years,

Plaintiff Nos. 1 to 4 residing at
44/3, 1st Main Road, 4th Cross,
Near Vidyanikethan School,
Vidyanagara, T. Dasarahalli,
Bangalore-560 057.

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5. Smt. Hemavathi D/o Bommegowda,
W/o Hanumanthappa,
Aged about 48 years,
6. Smt. Sakamma D/o Bommegowda,
W/o Devaraju, Aged about 42 years,
7. Kum. Manjula D/o Bommegowda,
W/o Manjappa, Aged about 36 years,

Plaintiff Nos.5 to 7 are
residing at Chikkaingala Village,
Birur Hobli, Kadur Taluk.

(By Sri. A.M.R. Advocate)

V/s-

DEFENDANTS

- :
1. Sri. C.B. Bommegowda,
S/o Late. Basappa,
Aged about 72 years, Agriculturist,
 2. Sri. C.B. Shivakumar,
S/o Bommegowda,
Aged about 30 years, Agriculturist,

Defendant Nos.1 and 2 are
Residing at Chikkingala Village,
Birur Hobli, Kadur Taluk.

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3. Smt. G.T. Yashoda,
W/o Late. Venkataramu,
Aged about 84 years,
4. Sri. M.V. Jayachandra,
S/o Late. Venkataramu,
Aged about 44 years,
5. Sri. Omkareshwara,
S/o Venkataramu,
Aged about 30 years,
6. Sri. A.V. Karthik,
S/o Late venkataramu,
Aged about 28 years,

Defendant Nos.3 to 5 are residing at
Anupama Nilaya, Near Nalanda High
School, Saptagiri Badavane, Tumkur.

7. Smt. Mariyamma,
W/o Late. K.S. Satyamurthi,
Aged about 66 years,
R/o Adishakti Nilaya, No.145,
Housing Board Colony,
Lakshmipura, Arasikere Town,
Hassan District.

**(D-1 and 2 By Sri. M.N. Advocate
D-7 by Sri. K.A.R. and
D-3 to 6 – Exparte)**

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**I.A. VI****APPLICANT/
PLAINTIFF No.2**

Smt. Yashodha

-V/s-**OPPONENTS /
DEFENDANTS/**

Sri. C.V. Bommegowda and Others

1.	Number of IA	I A No.VI
2.	Provision of law	Under Order 6 Rule 17 R/w Sec.151 CPC
3.	Filed by	Plaintiff No.2
4.	Date of filling	25.11.2023
5.	Date of filling of objections	10.01.2024
6.	Date of Order	18.03.2024

**ORDER ON I.A. NO.VI FILED U/O VI RULE XVII OF CPC BY
THE PLAINTIFF**

The learned Counsel for the Plaintiff has filed I.A.No. VI under Order VI Rule 17 seeking permission to amend the plaint by way of adding other properties.

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2. The plaintiff No.2 has sworn to an affidavit in support of the application, Wherein he has stated that, the plaintiff has filed the present suit against the defendants seeking the relief of partition and separate possession. The proposed properties Item No.2 to 5 are the joint family properties and the same are stands in the name of 1st defendant on the ground of Powthi and on the ground of partition. Those properties are necessary to be impleaded in the present case for proper adjudication of the matter and the plaintiffs are also entitled for the equal share over the proposed Item No.2 to 5 properties. Hence, prayed to allow the application in the interest of justice.

3. The defendant has filed a statement of objection by opposing the application. Wherein he has contended that the plaintiff has sworn to false affidavit. The application schedule properties are not the joint family properties. The proposed

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amendment will change the nature of the suit. Hence, he prays to reject the application with cost.

4. Heard the argument from counsel for plaintiff. Counsel for defendant called out absent. Hence arguments of defendant on IA No.VI was taken as not addressed.

5. The following Points would arise for consideration of this Court.

POINTS

1 Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

2 What Order ?

6. My findings to the above Points are as follows:

POINT NO.1 : In the ' Affirmative'

POINT NO.2 : As per final order
For the following:

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REASONS

7. **POINT NO.1**:- The plaintiff filed present suit for the relief of the Partition and separate Possession against the defendants.

8. Meanwhile the plaintiff has filed present application as well as affidavit and sought for amendment of plaint by adding the other properties.

9. In order to find out whether the Application of the plaintiff under Order VI Rule 17 for amendment of Plaint is bona-fide and sustainable at this stage or not, it is useful to refer to the relevant provisions of CPC. Order VI Rule 17 reads thus:

“17. Amendment 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*

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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.”

10. The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The principles that guide the exercise of discretion in allowing the amendment are that, to avoid multiplicity of proceedings. That amendments which do not totally alter the character of an action should be

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granted, while care should be taken to see that, injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretense of amendment.

11. In the present case on hand the matter was posted for plaintiff evidence. The plaintiff before starting the evidence has filed present application as well as sworn to an affidavit and argued that, due to due diligence he could not come to know about the other properties recently he came to know other properties which are the joint family properties of the plaintiff and defendants. The defendant has contended that, the proposed properties are not the joint family properties. However, the burden to prove whether the properties are joint family properties or not? Is upon the plaintiff. This court can not considered that fact at this pre-trial stage. The present suit is for partition and separate possession. Hence, impleading of all the properties is necessary subject to proof of the same. If

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the properties were impleaded it will not change in the nature of the suit and there is no hardship to the other side. Hence, this Court came to conclusion that the proposed amendment is very much required to determine the real controversy between the parties. It has been not leading to the injustice to other party. Therefore, at this stage, the plaintiff/applicant has made out the ground that, the proposed amendment is necessary to determine the real controversy between the parties. Accordingly, the Points under consideration are answered in the **Affirmative**.

12. POINT NO.2: - In view of the above discussion and answering the above Points, I proceed to pass the following:

ORDER

I.A. No. I filed by the plaintiff under Order VI Rule XVII of C.P.C. is hereby allowed with cost of Rs.300/-.

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No order as to costs.

(Order dictated to the stenographer on computer typed by her, revised, corrected & then pronounced by me in open court on this the 18th day of March 2024)

Sd/-
(SMT. AMRIN SULTANA),
1ST ADDL. CIVIL JUDGE & J.M.F.C.,
KADUR.

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