

KACM210043732022



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

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

Addl. Civil Judge & JMFC, Kadur

Dated this 14th day of February 2024

O.S.NO.637/2022

PLAINTIFF

: Smt. Siddamma D/o Ramaiha,
W/o Balaramaiah,
Aged about 65 years, Housewife,
R/o Saraswathipura Village,
Kasaba Hobli, Kadur Taluk.

V/s-

DEFENDANTS

- : 1. Smt. Yashodhamma,
W/o Late. Muddappa,
Aged about 65 years, Housewife,
2. Sri. Raju S/o Late. Muddappa,
Aged about 45 years, Agriculturist,
3. Sri. Krsihnamurthy,
S/o Late. Muddapp,
Aged about 38 years, Agriculturist,

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Defendant Nos.1 to 3
R/o Govindapura Village,
Birur Hobli, Kadur Taluk.

4. Smt. Janamma W/o Yalakappa,
S/o Balaramaiah,
Aged about 68 years, Housewife,
R/o Gulladamane Village,
Lingadahalli Hobli, Tarikere Taluk.
5. Smt. Jayagowramma,
W/o Narasimhamurthy,
S/o Balaramaiah,
Aged about 63 years, Housewife,
R/o Shettikere Gate, Chikkanayakanahalli
town, Chikkanayakanahalli Taluk.
6. Smt. Kamalamma W/o Anantharamaiah,
S/o Balaramaiah, Aged about 60 years,
Homemaker, R/o Padadamane,
Lakya Hobli, Chikkamagaluru Taluk,
Chikkamagaluru District.
7. Smt. Puttamma W/o Jayalakshmi Gowda,
S/o Balaramegowda,
Aged about 58 years, Homemaker,
R/o Uddeboranahalli, Lakya Hobli,
Chikkamagaluru Taluk and District.
8. Sri. Ramachandraiah S/o Rangappa,
Aged about 58 years, Retired Cook...

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9. Sri. Gurumurthy S/o Ramachandraiah,
Aged about 38 years, Driver,

10. Smt. Sakamma W/o Ramachandraiah,
S/o Balaramaiah,
Aged about 53 years, Homemaker,

Defendant Nos.8, 9 and 10 are R/o
No.878, Shettikere Gate,
Chikkanayakanahalli, Chikkanayakanahalli
Taluk, Tumkur District.

I.A.1

**APPLICANT/
PLAINTIFF**

Smt. Siddamma

-V/s-

**OPPONENTS /
DEFENDANTS/**

Smt. Yashodamma and Others

1.	Number of IA	I A No.I
2.	Provision of law	Under Order 6 Rule 17 R/w Sec.151 CPC
3.	Filed by	Plaintiff
4.	Date of filling	11.08.2023
5.	Date of filling of objections	07.11.2023
6.	Date of Order	14.02.2023

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

The plaintiff has filed the instant application U/O VI Rule XVII r/w Sec.151 of CPC praying Hon'ble Court to permit to amend the plaint as mentioned in the application for proper adjudication of the matter.

2. The plaintiff has filed the instant application U/O VI Rule 17 R/w Sec.151 of CPC praying to amend the plaint as mentioned in the application for proper adjudication of the matter. The plaintiff has sworn to an affidavit in support of the application. The plaintiff has contended that, at the time of filing the suit due to lack of knowledge and due to oversight he was unable to mention the name of 3rd daughter in para No.2 and

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he is intending to add the same and the said mistake came to the knowledge of the plaintiff recently. If the application is not allowed the plaintiff will be put to lot of hardship and the said amendment is necessary for the proper adjudication. Hence Plaintiff prays to allow the application.

3. The defendant Nos.8 to 10 has filed objection to this application. The defendant No.8 to 10 contended that, the plaintiff sworn to false affidavit the suit filed by the plaintiff is not maintainable. The partition was already effected between both the parties. The plaintiff has filed this application with malafide intention to drag on the proceedings. The plaintiff himself is making hectic efforts to pledge the property with malafide

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intention. The plaintiff by knowing the fact that, there is no status of existence of joint family property with malafide intention filed this application. Hence, prayed to dismiss the application.

4. Heard both sides. Perused the materials available on record.

5. The following points that arise for my consideration are as under ;

:POINTS:

- 1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?**
- 2. What Order ?**

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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:

:REASONS:

7. Point No.1 : The plaintiff has filed this suit for declaration, partition and separate possession. The plaintiff in this I.A has sought for amendment to add two words one is the name as Hemavathi another one is Janisiddu (ಜನಿಸಿದ್ದು) in para No.2. The present suit is for declaration, partition and separate possession and proposed amendment does not change the nature of the suit. Moreover, it is important to add complete information about the parties to prove the case of the

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plaintiff. Therefore, if plaintiff not added the proposed amendment he will be put to great hardship.

8. 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 shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

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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.”

9. 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

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amendments which do not totally alter the character of an action should be 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.

10. The present suit in hand is at the pre-trial stage and this court can permit the plaintiff to amend the plaint. The said amendment will not change the nature of the suit. Hence, the proposed amendment is necessary for determining the real questions in controversies between the parties. Hence, this court answers Point No.1 in the **Affirmative**.

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

ORDER

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

(Typed by me, directly on Laptop, corrected and then pronounced by me
in the open court on this 14th day of February 2024)

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

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