

KACM510002172023



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

**Present:** Smt.B.S.Rayannawar, B.A., L.L.B,  
Senior Civil Judge & JMFC.,  
N.R.Pura, Itinerate at Koppa.

**Dated this the 08<sup>th</sup> day of February 2024**

**OS.No.19/2023**

**BETWEEN:**

Smt.Divya V.U.,

...Plaintiff.

V/s.

**AND:**

Sri.Udayakumar V.P. and others

...Defendants.

**IA.NO.X**

**BETWEEN:**

Smt.Divya V.U.,

...Plaintiff/Applicant.

V/s.

**AND:**

Sri.Udayakumar V.P. and others

...Defendants/Opponents.



**ORDER ON IA NO.X**

Present application filed by the applicant/GPA Holder of Plaintiff under Order 6 Rule 17 R/w Section 151 of CPC seeking permission to amend the plaint.

**PROPOSED AMENDMENT**

**Schedule**

3(a).The plaintiff submits that with a malofied intention fraudulently misusing innocence of the plaintiff not given the proper share, or the value of the property to the plaintiff and cheated the plaintiff from getting the legal equal share in the property of joint family and shown only Rs.1,00,000/- and that is not given to her. As stated in the partition deed, the act of the defendant No.1 and 2 is the fraudulent one and only to cheat the plaintiff which is not binding on her share. Hence this suit is filed for the partition.

2. I.A. supported with the affidavit of GPA holder of plaintiff wherein stating that, she is the GPA holder of the plaintiff in the above case, she known the full facts about in the case, the defendant No.1 is father of the



plaintiff, and defendant No.2 is brother of plaintiff and No.3 is mother of the plaintiff. The plaintiff has filed the suit for the partition and separate possession of the suit schedule property. The suit schedule property was originally ancestral property of the plaintiff and defendants subsequent to death of grandfather, in the partition, suit schedule property item No.1 to 6 as falling to the share of the father of the plaintiff and item No.7 and 8 are granted to father of the plaintiff under akrama sakrama scheme. Without the consent of the plaintiff to get benefit from the government the partition was made by father of the plaintiff as stated in the plaint and subsequent to marriage of the plaintiff, the defendants are denied to give share to the plaintiff and the above stated partition deed is Sham and not binding on the plaintiff. With a malafied intention fraudulently misusing innocence of the plaintiff not given



the proper share, or the value of the property to the plaintiff and cheated the plaintiff from getting the legal equal share in the property of joint family and shown only Rs.1,00,000/- and that is not given to her. As stated in the partition deed, act of the defendant No.1 & 2 is the fraudulent one and only to cheat the plaintiff which is not binding on her share. Hence the plaintiff is filed the suit for the partition. The application of the plaintiff is not intentional but a bonafied one, if the application is allowed no hardship is cause to the other side. If the application is not allowed the plaintiff is put to inconvenience and hardship. The plaintiff submits that the amendment is necessary in the plaint, amendment is not carried out the pleading is not sufficient to grant the relief hence this application. Hence prays to allow the application.



3. I.A. opposed by defendants by filling written objection contending that, the application filed by the plaintiff is not maintainable either in law or on facts. The application is not supported by the affidavit of the plaintiff but it is supported by the affidavit of the alleged GPA holder of the plaintiff but the application filed under Order 3 rule 2 is not accepted. Hence the application is liable to be dismissed.

4. Further contended that in the affidavit supporting I.A.No.10 no reason is assigned for seeking amendment. Without assigning any reason, the parties cannot seek amendment of the pleadings. The pleadings of the parties are sacrosanct and cannot be allowed to amended at the whims and fancies of the parties. If the plaint is amended at this stage, the defendants will be put to untold hardship. Hence prays to dismiss the application



with heavy cost.

5. Heard both respective counsels. Learned counsels for plaintiff filed memo with citation reported in: 2023 (2) KCCR 1668 (Milaap Social Ventures India Pvt. Ltd., Bengaluru Vs. Google India Pvt. Ltd., Bengaluru), 2023 (2) KCCR 1284 (Subhadra Vs. Jayanthi), 2023(3) KCCR 2485 (Kum.Meenakshi and Others Vs. Smt.H.Nagarathamma and others), Learned counsel for defendants filed memo with citations reported in: ILR 1996 KAR 2462 (Ninge Gowda Vs. Sahadevan).

6. Heard both respective counsels for plaintiff and defendant. Perused I.A, annexed affidavit, objections filed by defendant and other materials placed on record the following points that would arise for my consideration.



**POINTS**

1. Whether the plaintiff made out grounds for amendment of plaint?
2. What order ?
7. 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**

8. **Point No.1:** The plaintiff bank filed present suit against the defendants for partition and separate possession. Plaintiff filed this present application to permit the plaintiff to amend the plaint.

9. It is the contention of plaintiff that the defendant No.1 is father of the plaintiff, and defendant No.2 is brother of plaintiff and No.3 is mother of the plaintiff. The plaintiff has filed the suit for the partition and separate possession of the suit schedule property. The suit schedule property was originally ancestral property of the



plaintiff and defendants subsequent to death of grandfather, in the partition, suit schedule property item No.1 to 6 as falling to the share of the father of the plaintiff and item No.7 and 8 are granted to father of the plaintiff under akrama sakrama scheme. Without the consent of the plaintiff to get benefit from the government the partition was made by father of the plaintiff as stated in the plaint and subsequent to marriage of the plaintiff, the defendants are denied to give share to the plaintiff and the above stated partition deed is Sham and not binding on the plaintiff. With a malafied intention fraudulently misusing innocence of the plaintiff not given the proper share, or the value of the property to the plaintiff and cheated the plaintiff from getting the legal equal share in the property of joint family and shown only Rs.1,00,000/- and that is not given to her. As stated in the partition deed, act of the



defendant No.1 & 2 is the fraudulent one and only to cheat the plaintiff which is not binding on her share. Hence the plaintiff is filed the suit for the partition.

10. The plaintiff submits that the amendment is necessary in the plaint, amendment is not carried out the pleading is not sufficient to grant the relief. The plaintiff by way of amendment intends to insert para "3(a) that with a malafied intention fraudulently misusing innocence of the plaintiff not given the proper share, or the value of the property to the plaintiff and cheated the plaintiff from getting the legal equal share in the property of joint family and shown only Rs.1,00,000/- and that is not given to her. As stated in the partition deed, the act of the defendant No.1 and 2 is the fraudulent one and only to cheat the plaintiff which is not binding on her share. Hence this suit is filed for the partition.



11. Hence if the plaintiff not permitted to amend the plaint as per proposed amendment hardship caused to the plaintiff and on the other hand no hardship will be caused to the defendant, as they have every liberty to file additional written statement. Hence, if the application is not allowed it leads to multiplicity of proceedings. And if the plaintiff is not permitted to amend the plaint, she cannot prove her case and it is well settled legal principle that courts while deciding such matters should not adopt hyper technical approach and liberal approach should be the general rule. Particularly in cases where other side can be compensated with costs. Hence, to avoid multiplicity of proceedings and to meet out the ends of justice and for striking balance between the interests of the parties it is just and proper that, plaintiff may be permitted to amend the plaint. Hence **point No.1 answered in the affirmative.**



12. **Point No.2:** In view of the discussions made above this court proceeds to pass the following:

**ORDER**

IA No.X filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of CPC is hereby allowed with cost of Rs.100/-.

Plaintiff permitted to carried out amendment in the plaint.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 08<sup>th</sup> day of February, 2024)

Sd/-

**(B.S.Rayannawar)**

Senior Civil Judge and JMFC.,  
N.R.Pura, Itinerate at Koppa.