

KACM510003952021



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

Present: Sri. Raghunatha Gowda.K.T.,B.com.,L.L.B.,
Senior Civil Judge and JMFC., N.R.Pura, Itinerate at Koppa

Dated this 21st day of February 2025

O.S.NO.13/2021

BETWEEN:

M.R.Sreedhara Adiga and others

....Plaintiffs.

V/s.

AND:

Smt.Kamalakshi and others

...Defendants.

IA.No.XXI

BETWEEN:

M.R.Sreedhara Adiga and others

....Plaintiffs.

V/s.

AND:

Smt.Kamalakshi and others

...Defendants.

ORDERS ON I.A. No.XXI

When the matter posted for further chief of Pw1 at this stage plaintiff No.1 filed this application under order VI Rule 17 R/w sec.151 of C.P.C. seeking permission to amend the plaint i.e proposed amendment.

- 1) ವಾದ ಪತ್ರದ ಹತ್ತನೆ ಪ್ಯಾರಾದಲ್ಲಿ ಇರುವ 'ಮೂವರು' ಎಂಬ ಪದವನ್ನು 'ನಾಲ್ವರು' ಎಂದು ತಿದ್ದುಪಡಿ ಮಾಡಬೇಕು.
- 2) ವಾದ ಪತ್ರದ ಹತ್ತನೇ ಪ್ಯಾರಾದ ಮೂರನೇ ಸಾಲಿನ ಕೊನೆಯಲ್ಲಿ 'ಮತ್ತು ಎಸ್ ಆರ್ ಜಗದೀಶ್' ಎಂದು ಸೇರ್ಪಡೆ ಮಾಡಬೇಕು.
- 3) ವಾದ ಪತ್ರದ ಹತ್ತನೇ ಪ್ಯಾರಾದ ಕೊನೆಯಲ್ಲಿ ಈ ಮುಂದಿನ ವಾಕ್ಯವನ್ನು ಸೇರಿಸಬೇಕು 'ಸದರಿ ಎಸ್ ಆರ್ ಜಗದೀಶ್ ರವರು ದಿನಾಂಕ 18-08-2006 ರಂದು ಅವಿವಾಹಿತ ಪೌತಿಯಾಗಿದ್ದು ವಾದಿಗಳು ಹಾಗೂ 9 ನೇ ಪ್ರತಿವಾದಿಯಾದ ಎಸ್ ಆರ್ ಭಾಗ್ಯಲಕ್ಷ್ಮಿ ಇವರುಗಳು ದಿ: ಎಸ್ ಆರ್ ಜಗದೀಶ್ ರವರ ಕನೂನು ಬದ್ಧ ವಾರಸುದಾರರಾಗಿರುತ್ತಾರೆ'.

2. It is stated in the affidavit of plaintiff No.1 that, they have filed the suit against defendants for the relief of Partition and Separate Possession, when the matter posted for further chief of Pw1 at that time he has verified the plaint and notice a mistake in the plaint that non mentioning of his diseased brother S.R. Jagadheesh was died unmarried and he died intestate living behind plaintiffs and defendant No.9 as his legal heirs and the said mistake is not intentional one and it is a bonafide one. If the amendment application is allowed the nature of the suit will not be changed and If the amendment

application is rejected he will suffers irreparable loss. Hence, he prays to allow the application.

3. The defendant No.13 counsel filed objection to said application contended that the application filed by the plaintiff No.1 is not maintainable either in law or facts. Further he contended that after lacks of 3 years the present application is filed with an intention to dragon the proceeding and harass the defendant No.13 and there is no due diligence on the part of the plaintiff to file this application and if the application is allowed the nature of the suit and the cause of action will be changed. If the application is allowed he will suffers irreparable loss it will not compensated in terms of money. Hence he prays to reject the said application.

4. The defendant No.10 counsel filed objection to said application contended that the application filed by the plaintiff No.1 is not maintainable either in law or facts. Further he contended that after lacks of 3 years the present application is filed with an intention to dragon the proceeding and harass the defendant No.10 and there is no due diligence on the part of the plaintiff to file this application. Further he contended that the plaintiff has not obtained survivorship certificate from the competent authority and if the application is allowed the nature of the suit and the cause

of action will be changed. If the application is allowed he will suffers irreparable loss it will not compensated in terms of money. Hence he prays to reject the said application.

5. Heard learned counsel for plaintiffs and defendants and perused the materials on record.

6. The following point arises for my consideration:

- i) Whether the application filed by the plaintiff No.1 deserves to be allowed?
- ii) If so, what order?

7. My answer to the above points are as follows :

Point No. 1 : **In the Affirmative.**

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

REASONS

8. **POINT No.1 :-** The plaintiffs are filed this Suit against the defendants for relief of Partition and Separate Possession. Now the matter is posted for further chief of Pw1, at this stage the plaintiff No.1 filed this application to seeking the amendment of plaint as stated in the earlier paragraph of this order.

9. I have gone through the entire materials available on record the plaintiffs are seeking amendment of the plaint that their brother by name deceased S.R.Jagadheesh died without marriage and themselves and defendant No.9 are only legal heirs the said fact was not mentioned in para No.10 of the plaint and the said mistake is bonafied one. The proposed amendment is very much necessary to adjudicate the matter. Further the reasons assigned in the affidavit of plaintiff No.1 is satisfied.

10. Further I relied on the judgment reported in **2022 (3) KCCR 2078 in between Smt. Sarojamma and another V/s A.Y. Anilkumar**. In the said judgment at para No.5 the Hon'ble High Court held that the amendment given the real nature of controversy, would be necessary for effective and complete adjudication. Under such circumstances the amendment application can be allowed. Further moreover in order to avoid multiplicity of proceeding between the parties and also the court will comes to proper conclusion the amendment is necessary and if the amendment application is allowed no loss or harm caused to the other side and this court is of considered opinion that, the proposed amendment do not in any manner change the nature of the suit and would not cause prejudice to the other side. Thus, in order to

effective adjudicate the controversy involved in the suit, it is just and necessary to amend the plaint and in order to delay of filing this application by the plaintiff No.1 to impose a suitable costs. Accordingly aforesaid point for consideration is answered in **the Affirmative**.

11. **POINT No.2** :- In view of my findings on Point No.1, I proceed to pass the following :-

ORDER

*I.A. No.XXI filed by the plaintiff
No.1 under order VI Rule 17 R/w.
Sec.151 of C.P.C. is hereby allowed with
costs of Rs.200/-.*

*The plaintiff No.1 is permitted to
amend the plaint and also furnish the
amended plaint.*

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **21st day of February 2025**)

Sd/-
(Raghunatha Gowda K.T.)
Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.