

KACM700007252019



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
PRINCIPAL J.M.F.C., TARIKERE**

**PRESENT : *Sri M.C. Nanje Gowda, B.A.L., LL.M.,
Senior Civil Judge & Prl. J.M.F.C.,
Tarikere. .***

DATED : THE 18th DAY OF AUGUST 2022.

O.S.NO.156/2019

PLAINTIFF/S :

Smt. Omkaramma W/o late
Parameshwarappa, D/o late
Chandappa, aged about 65 years,
agriculturist, R/o Karakuchi
village, Lakkavalli Hobli, Tarikere
Taluk.

(By Sri/Smt. H.Bharathi, Advocate)

- Vs -

DEFENDANT/S:

1. Smt. Basamma W/o late
Chandappa, aged about 83 years,
agriculturist, R/o Bettadahalli
village,



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2. Mallikarjun S/o late Chandappa, aged about 53 years, agriculturist, R/o Bettadahalli village, Kasaba Hobli, Tarikere Taluk.

3. Special Land Acquisition Officer & Authority, N.H.206, Tumkuru – Shivamogga, Shivamogga Division, # 611 – 368 / 368-1, 2nd Floor, Central Avenue, Near S.B.I. Bank, N.T. Road, Shivamogga – 577 202.

4. Asst. Commissioner, Land Acquisition Officer, Tarikere Sub-Division, Tarikere.

(D-1 by Sri.K.R.G., D2 by Sri.B.N.K., Advocates and D3 – exparte)

PARTIES TO I.A.NO.VIII

Applicant/s: Smt. Onkaramma
V/s

Opponent/s: Mallikarjun (defendant No.2)



ORDER ON IA-VIII

The plaintiff has filed an application under order VI rule 17 r/w Sec.151 of CPC seeking permission to amend the plaint as shown in the application.

2. The defendant No.2 has filed objections.
3. Heard.
4. The following points arise for consideration of this Court :

1. Whether the plaintiff has made out grounds to permit her to carryout amendment as sought in the application?

2. What order ?



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5. Now, the findings of this Court to the above points are as under :-

Point No.1 : In the Affirmative

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

REASONS

6. POINT No.1 :- Along with application, the plaintiff has filed an affidavit sworn to by her. In the said affidavit, she has stated that she has filed suit for partition. The defendant No.2 has pleaded previous partition in his written statement. The defendant No.2 has misused his faith and trust and obtained signature on the partition deed. The said partition deed is not binding on him. Therefore, he wants to seek necessary relief regarding the said partition by making necessary amendment in the body of the plaint and prayer column.



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7. On the other hand, the defendant No.2 in the objections has denied the averments of the affidavit. He has contended that the case is set down for cross-examination. He has not filed any rejoinder to the written statement filed by the defendant No.2. Therefore, now he cannot makes such application for amendment. It is contended by him that in order to drag the proceedings and cause harassment, the application is filed.

8. At the outset, it is pertinent to note that it is well settled principle law that all the amendments shall be considered liberally, if they are made before commencement of the evidence. In the present case, it is pertinent to note that



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though the chief-examination has been filed by the plaintiff, she has not undergone the cross-examination by the defendants. It is well settled that the evidence includes chief as well as the cross-examination. Therefore, virtually it shall be deemed that yet the evidence has not been commenced in the present case.

9. The say of the plaintiff is that the defendant No.2 has obtained the signature on the partition deed by misusing his faith and trust. Therefore, necessary relief has to be sought in the plaint. The plaintiff has denied it in the objections. But unless amendment is allowed, whether such contentions is true or false cannot be ascertained. The defendant in the objections though contended that, the plaintiff has not filed any rejoinder, he has not stated how the filing of rejoinder is



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mandatory and it is necessary in the present case. If the application is filed in order to drag the proceedings or there is delay in making application, certainly such delay can be compensated by way of cost.

10. Admittedly, the plaintiff wants to add one para in the plaint. She does not want to replace any paras and thereby withdraw the admission given if any. Therefore, there will not be any prejudice to the defendant also. The defendant No.2 would have an option of filing additional written statement and raise contention with regard to the limitation and to take any other defences provided under law. Therefore, in order to avoid the multiplicity of proceedings and to put an end to the litigation between the parties fully and completely, it is just and necessary to allow the application filed by the plaintiff and



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permit the amendment as sought in the application. However, the plaintiff could have filed the application immediately after the written statement filed by the defendant. As such, there is some delay in making application. Same has to be compensated by way of cost. Accordingly, **Point No.1 is answered in the Affirmative.**

11. **POINT No.2**:- For the reasons stated and findings given to the above points, this court proceed to pass the following :

ORDER

IA No.VIII filed by the plaintiff under order VI rule 17 r/w Sec.151 of CPC is hereby allowed on cost of Rs.250/-.



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The plaintiff is directed to carryout
amendment and furnish amended plaint.

Call on by 2/9/2022.

Sd/-
(M.C. NANJE GOWDA)
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.