

KACM710002002016



**IN THE COURT OF THE CIVIL JUDGE & ADDL J.M.F.C., AT:
TARIKERE.**

Present

SMT. ROOPA M .D
B.A (L) L.L.B.
CIVIL JUDGE & ADDL. JMFC, TARIKERE.

O.S.No.65/2016

Dated on this the 14th day of December 2021

Plaintiff/s : **Smt.M.B.Radha @ M.B.Rajamma,**
W/o Rajashekharaiiah,
D/o late Basappa,
Aged about 52 years,
Household Work,
R/o Rangapura Village at Post,
Kasaba Hobli,
Tipturu Taluk,
Tumkur District.

(By Sri.G.C.Thimmaiah-Adv.)
V/s

Defendant/s: 1. **B.Shankrappa,**
S/o late Basappa,
Aged about 60 years,
Rtd. Govt. Employee,
R/o Shivaparvathi Nilaya,
15th Cross, B.V.S Layout,
Belekalli,
Bannerughatta Road,
Bengaluru-76.

2. **M.B.Mallesha**ppa,
S/o late Basappa,
Aged about 58 years,
Agriculturist,
R/o Mundre Village at Post,
Amruthapura Hobli,
Tarikere Taluk,
Chikkamagaluru District.
Bengaluru-76.
3. **M.B.Devendrappa**,
S/o late Basappa,
Aged about 49 years,
Agriculturist,
R/o Doranalu Village at Post,
Kasaba Hobli,
Tarikere Taluk,
Chikkamagaluru District.
Bengaluru-76.
4. **M.B.Chandrashekharappa**,
S/o late Basappa,
Aged about 55 years,
Agriculturist,
R/o Pampa Mahakavi Road,
Amruthapura Hobli,
Tarikere Town & Taluk,
Chikkamagaluru District.

Working at

M.B.Chandrashekharappa,
S/o late Basappa,
Aged about 55 years,
Librarian,
S.M.R College,
Shankaraghatta,
Bhadravathi Taluk,
Shivamogga District.
Bengaluru-76.

5. **Smt.Vinodhamma,**
W/o L.C.Gangadharappa,
Aged about 42 years,
Household Work,
R/o Laxmisagara Village,
Hadikere Post,
Amruthapura Hobli,
Tarikere Taluk,
Chikkamagaluru District.

(D1-3-By Sri.Aseen Ahammed-Adv.)

(D4-By Sri.C.S.Shivaprasad-Adv.)

(D5-By Sri.C.B.Vishwanath-Adv.)

PARTIES ON IA.No.16

Applicant/ : M.B.Chandrashekhara
Defendant No.4

/Vs/

Opponent/ : M.B.Radha
Plaintiff

ORDER ON IA NO.16 FILED BY THE DEFENDANT NO.4

UNDER ORDER 6 RULE 17 R/W SEC.151 OF CPC

The applicant / defendant No.4 filed the present I.A. No.16 U/o.6 R.17 R/w Sec.151 of CPC seeking to amend the written statement.

2. Allowing the said application is opposed by the plaintiff by filing objection.

3. Allowing the said application is also opposed by the defendant No.3.

4. Heard both sides

5. The following points arise for my consideration:-

1. Whether the proposed amendment is necessary for determining real question in controversy between the parties?

2. What order?

6. My answer to the above points are:-

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:-** The suit is one for partition and separate possession. When the case is posted for further evidence of defendant, the present application is filed by the defendant No.4 to amend the written statement. By way of amendment, the defendant No.4 intends to insert the para 29 to the written statement as follows:-

29. Without prejudice to the contentions urged herein above if for any reason the Hon'ble Court comes to the conclusion that suit schedule items 1,2 & 4 are ancestral and joint family properties of Basappa and his children and in view of Section 30 of HSA Act the said Basappa having right to bequeath the properties under will. It is submitted respectfully that in view of the

disposition of properties by Basappa and also in view of the fact that this defendant is only person claiming under will the properties bequeathed under will by Basappa the be allotted to the share of this defendant.

8. In the accompanying affidavit annexed to the I.A.No.16, it is stated by the defendant that pursuant to the examination of defendant No.3 as DW.1 it was observed that suitable defence as a matter abundant caution needs to be pleaded and in view of the previous suit if this Court comes to conclusion that item No.1, 2 and 4 are ancestral and joint family properties of Basappa and his children, then provision of Sec.30 of Hindu Succession Act which is given right to execute Will by the father needs to be pleaded. Therefore, the present application.

9. The counsel for the plaintiff filed objection. The defendant No.3 has filed objection and has sought to permission of this Court to object the said application as the suit is for partition and the right of the defendant No.3 is also involved. As such, permission was accorded to defendant No.3 and defendant No.3 has filed objection to IA.No.16. The plaintiff and defendant No.3 have contended that the proposed amendment is in improvement on the part of the defendant No.4 and filed to dodge the proceedings, the said application is filed at belated stage

and based on false affidavit and hence, the present application is liable to be dismissed.

10. Undoubtedly, no amendment can be allowed after framing of Issues. However, what is pertinent to note that the defendant by way of amendment is seeking to determine the right of defendant No.4 based on the Will. The plaintiff and defendant No.4 have pleaded about the Will said to have been executed by Basappa. In such circumstances, though the provision of Law has been quoted by the defendant No.4 in the proposed amendment, the right of defendant No.4 vide the Will said to have been executed by Basappa has been pleaded. In such circumstances, I am of opinion that the present application is liable to be allowed.

11. The proposed amendment does not change the nature of the suit and it is just and necessary to determine whether the defendant No.4 has right over of the item No.1, 2 and 4 property by virtue of the Will said to have been executed by Basappa. Allowing the said application will not inflict the opposite parties into irremediable character. As such to avoid multiplicity of proceedings and for fair adjudication of the matter, I am of the opinion that the present application deserves to be allowed. Therefore, I answer point No.1 in the Affirmative.

Point No.2:-

12. From the foregoing discussions and reasons stated therein and in view of my findings to point No.1, I proceed to pass the following:

ORDER

I.A No. 16 filed by the
applicant/defendant No.4 under Order 6 Rule
17 of CPC is hereby allowed.

For amendment of the written statement
and amended written statement.

*(Direct Dictation given to the Stenographer, typed by him,
corrected by me and then pronounced in the open Court on this the 14th
day of December 2021 .)*

Sd/-
(Roopa M.D)
Civil Judge & J.M.F.C.
Tarikere.