

KACM710005842017



**IN THE COURT OF THE CIVIL JUDGE AND ADDL.
JMFC AT TARIKERE**

Dated This the 7th day of December 2022

PRESENT

**Sri. P.S.Santhosh Kumar, M.Com., LL.M.,
Civil Judge & Addl. JMFC,
Tarikere.**

O.S.No.103/2017

**PLAINTIFF: Sri. Malleshappa,
S/o Late. Sri. Erappa,
Aged about 43 years,
Agriculturist,
R/o. Kenchapura village,
Chikkanavangala post,
Shivani Hobli,
Tarikere Taluk.**

(By Sri. C.S.S., Advocate)

V/s.

DEFENDANTS:

**1. Sri. Siddappa,
S/o Late. Sri. Erappa,
Aged about 63 years,**



2. Sri. Ramappa,
S/o Late. Sri. Erappa,
Aged about 60 years,

3. Sri. Murthappa,
S/o Late. Sri. Erappa,
Aged about 56 years,

4. Sri. Rajappa,
S/o Late. Sri. Erappa,
Aged about 54 years,

5. Sri. Gangadharappa,
S/o Late. Sri. Erappa,
Aged about 52 years,

All are agriculturist,
R/o. Kenchapura village,
Chikkanavangala post,
Shivani Hobli,
Tarikere Taluk.

(D.1 by Sri. P.R., Advocate)
(D.2 & 3 by Sri. T.D.A., Advocate)

PARTIES ON I.A.No.V

Applicant: Sri. Siddappa (D.1)

-V/S-

Opponent: Sri. Malleshappa



ORDERS ON I.A No.V

The defendant No.1 has filed I.A.No.V u/o.VI rule 17 r/w. Sec.151 of CPC seeking for amendment of written statement.

:- The proposed amendment is as under :-

ಪ್ರತಿವಾದಿ ಪತ್ರದ ಪ್ಯಾರ ನಂ3, 4 ತೆಗೆದು ಹಾಕಿ, ಆ ಜಾಗಕ್ಕೆ ಈ ಕೆಳಕಂಡ ಅಂಶಗಳನ್ನು ಪ್ಯಾರ ನಂ. 3, 4 ಆಗಿ ಸೇರ್ಪಡೆ ಮಾಡತಕ್ಕದ್ದು.

3. ವಾದಿಯು ವಾದಪತ್ರದ ಪ್ಯಾರ 6 ರಲ್ಲಿ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರ ತಂದೆಯವರಾದ ಈರಪ್ಪನವರು ತೀರಿಕೊಂಡ ತರುವಾಯ ಸದರಿ ದಾವಾ ಆಸ್ತಿಗಳು ಪೌತಿ ಸಬೂಬು ಆಧಾರದ ಮೇಲೆ ದಿನಾಂಕ 20.12.2016ರಂದು ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳಲ್ಲಿ ಅಂದರೆ ಎಂ.ಆರ್.ನಂ.ಹೆಚ್1/2016-17 ರಂತೆ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರ ಹೆಸರಿಗೆ ಖಾತೆ ಬದಲಾವಣೆಯಾಗಿರುವುದು ಸರಿ ಇರುತ್ತದೆ. ಆದರೆ ವಾದಿಯು ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳಲ್ಲಿ ಇರುವಂತೆ ಹಾಗೂ ವಾದಿಪ್ರತಿವಾದಿಗಳು ಈಗ ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ಸಾಗುವಳಿ ಮಾಡುತ್ತಿರುವಂತೆ ಸದರಿ ಆಸ್ತಿಗಳನ್ನು ವಿಭಜನೆ ಮಾಡಬೇಕೆಂದು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಾವೆ ಹೊಡೆರುವುದು ಸಮಂಜಸವಲ್ಲ. ಇದು ಕಾನೂನುಬದ್ಧವಾಗಿರುವುದಿಲ್ಲ. ನ್ಯಾಯ ಮತ್ತು ಸಮಾನತೆ ದೃಷ್ಟಿಯಿಂದ ಸರಿಯಲ್ಲ.

4. ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳಲ್ಲಿ ಇರುವಂತೆ ಹಾಗೂ ದಾವಾ ಆಸ್ತಿಗಳನ್ನು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಗಳು ಈಗ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿರುವಂತೆ ದಾವ ಆಸ್ತಿಗಳು ವಿಭಜನೆಯಾದರೆ 1 ನೇ ಪ್ರತಿವಾದಿಗೆ ತುಂಬಾ ನಷ್ಟವುಂಟಾಗುತ್ತದೆ ಹಾಗೂ ದಾವ ಆಸ್ತಿಗಳಲ್ಲಿ 1 ನೇ ಪ್ರತಿವಾದಿಗೆ ಸಮನಾದ ಪಾಲು ದೊರೆಯುವುದಿಲ್ಲ ಹಾಗೂ ಕೆಲವು ದಾವ ಆಸ್ತಿಗಳಲ್ಲಿ ಸಂಬಂಧಿಸಿದ ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳಲ್ಲಿ 1 ನೇ ಪ್ರತಿವಾದಿಯ ಹೆಸರು ಇರುವುದಿಲ್ಲ. ಅಲ್ಲದೇ ದಾವ ಆಸ್ತಿಗಳಲ್ಲಿ ಹೆಚ್ಚಿನ ಪಾಲು ವಾದಿಗೆ ದೊರೆಯುವುದರ ಜೊತೆಗೆ ಮೌಲ್ಯಯುತವಾದ

KACM710005842017



ಆಸ್ತಿಗಳು ವಾದಿಯ ಹಿಸೆಗೆ ಬರುತ್ತದೆ. ವಾದಿಯು 1 ನೇ ಪ್ರತಿವಾದಿಗೆ ಸಮನಾದ ಪಾಲು ಸಿಗಬಹುದು ಎಂಬ ಕಾರಣದಿಂದ 1 ನೇ ಪ್ರತಿವಾದಿಗೆ ದಾವ ಆಸ್ತಿಗಳ ಮೇಲೆ ಇರುವ ಹಕ್ಕನ್ನು ಕಿತ್ತುಕೊಳ್ಳಬೇಕೆಂಬ ದುರುದ್ದೇಶದಿಂದ ರೆವಿನ್ಯೂ ದಾಖಲೆಗಳ ಆಧಾರದ ಮೇಲೆ ಹಾಗೂ ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿಯರು ದಾವ ಆಸ್ತಿಗಳನ್ನು ವಿಭಜನೆ ಮಾಡಬೇಕೆಂದು ವಾದಿಯು ಕೇಳಿದ್ದು, ಈ ಕಾರಣಕ್ಕಾಗಿಯೇ 1 ನೇ ಪ್ರತಿವಾದಿಯು ಪಾಲು ವಿಭಜನೆಗೆ ಒಪ್ಪಿಕೊಂಡಿರುವುದಿಲ್ಲ.

2. In the affidavit annexed to the said I.A., he has stated that he has failed to state the proposed amendment in his pleadings. The proposed amendment is necessarily to be pleaded in his written statement. If the application is allowed, no hardship or injury would be caused to the plaintiff. On the other hand, he will be put to irreparable loss and injury.

3. The plaintiff has filed his objections to I.A.No.V contending that the present application is filed after a long time only to drag on the proceedings. If the proposed amendment is permitted, it will take away the admissions of the defendants. Accordingly, prayed for dismissal of the I.A.

4. Heard both the sides on I.A.No.V and perused the the other materials available on record.

KACM710005842017



5. The points that arise for my consideration are as follows :-

1. Whether the I.A.No.V filed by the defendant No.1 deserves to be allowed?

2. What Order?

6. My findings on the above points are as under :-

Point No.1: Partly in the affirmative,
Point No.2: As per final order,
for the following:-

:: REASONS ::

7. **POINT No.1:** The plaintiff has filed this suit against the defendants for the relief of partition and separate possession in respect of the suit schedule property. The defendant No.1 has filed this I.A. seeking for amendment of the written statement since the proposed amendment is not pleaded in his written statement. Upon going through the proposed amendment, it could be seen that the defendant wants to plead in reply to the averments of the plaint para 6 regarding allotment of shares in the suit schedule

KACM710005842017



property not according to the possession of the parties by deleting para No.3 and 4 of the written statement. It is further relevant to mention here that paragraph No.3 and 4 are if permitted to be deleted, it would definitely take away his earlier pleadings, as such I am of the opinion that the defendant No.1 cannot be permitted to be deleted. The defendant cannot be permitted to plead something at one stretch and get it removed at another stretch. However, if the proposed amendment is permitted as his additional pleadings, in my opinion, it will not change the nature of suit or cause of action. However, considering the age of the suit and the stage at which the present application is filed and also keeping in mind the fact that the plaintiff's evidence in this case is at the stage of beginning, I am of the opinion that the I.A.No.V filed by the plaintiff deserves to be allowed on suitable costs. With these observations, my findings on Point No.1 **'Partly in the affirmative'**.

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

KACM710005842017

**:: O R D E R ::**

I.A.No.V filed by the defendant No.1 u/o.VI rule 17 r/w. Sec.151 of CPC is hereby allowed in part subject to on cost of Rs.1000/-.

The proposed amendment as regards deletion of para No.3 and 4 is hereby rejected.

The defendant No.1 is permitted to plead para No.3 and 4 as additional paras after para No.15 i.e. as para 15[a] and [b].

The defendant No.1 shall amend the original written statement accordingly before the CMO of this office and shall file amended plaint within next date of hearing.

(Dictation to the Stenographer, transcribed by him, then corrected by me, signed and then pronounced by me in the Open Court on this the **07th day of December 2022**)

sd/-

(P.S.Santhosh Kumar)
Civil Judge & Addl. JMFC,
Tarikere.

SAR