

ORDER ON I.A.NO.III

The plaintiffs have filed this I.A., when the matter is set down for plaintiff's evidence.

2. The plaintiffs have filed the instant I.A., under Order VI Rule 17 of CPC and pleaded to permit them to amend the plaint in schedule names and also to insert additional schedule after Schedule-K as sought in the I.A.

: PROPOSED AMENDMENT :

SCHEDULE-L

All the piece and parcel of the agricultural land bearing Survey No.85/3p1, of Makanahalli village, earlier Amruthapura Hobli, Tarikere Taluk, Presently Kasaba Hobli, Ajjampura Taluk, Chikkamagalore Dist measuring 05 gunas and 2 guntas karab Bounded on

East: Property of Prema Kumar W/o. Malleshappa

West: Property of Sy No.85/2P1

North: Property of Drakshyanamma W/o. Doddaiiah

South: Property of Basavarajappa S/o. Kallappa

SCHEDULE-M

All the piece and parcel of the House property Old Assessment No.162, New Assessment No.186 situated at Makanahalli village, earlier Amruthapura Hobli, Tarikere Taluk, Presently Kasaba Hobli, Ajjampura Taluk, Chikkamagalore. Measuring East to West 21 feet, North to South 6 feet, Bounded on

East: Property of Kallappa
West: Property of Gangappa
North: T.H. Road.
South: V.P. Road.

SCHEDULE-N

All the piece and parcel of the House property Old Assessment No.166, New Assessment No.189 AND 190 situated at Makanahalli village, earlier Amruthapura Hobli, Tarikere Taluk, Presently Kasaba Hobli, Ajjampura Taluk, Chikkamagalore. Measuring East to West 52 feet, North to South 98 feet, Bounded on
East: Property of Onkarappa
West: Property of Basavarajappa
North: Road
South: Private property

3. The I.A., is supported with the affidavit of the plaintiff No.1. It is stated in the affidavit that, at the time of filing of the suit, due to over sight wrongly mentioned the schedule names and one schedule was also left out the schedule properties mentioned in the I.A. Hence it is just and necessary to amend the plaint. If the proposed amendment is not allowed, they will be put to untold hardship and injury and further the proposed amendment sought for will not change the nature of the suit and proposed amendment is necessary to adjudicate the real dispute in question. Hence, this application.

4. After giving sufficient opportunity to the defendants, the defendants have not filed any objection to the said I.A, hence objections to I.A.No.III is taken as not filed.

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

6. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.III filed by the plaintiffs is deserves to be allowed and whether the amendment sought by the plaintiffs is very much necessary to determine the real controversy between the parties?
- 2) What order?

7. My findings on the above points are as follows :

Point No.1 : In the Affirmative,

Point No.2 : As per the Order,

for the following:

REASONS

8. **POINT NO.1** : On perusal of the materials available on record, admittedly the plaintiffs have filed present suit against the defendants for the relief of partition and separate possession in respect of suit schedule properties. When the matter is set down for plaintiff's evidence, the plaintiffs have filed this instant I.A., to amend the plaint as sought in the I.A. It is the urge of the plaintiffs that, at the time of filing of

the suit, due to oversight the serial number of the schedule properties was wrongly mentioned and also left some of the joint family properties of plaintiffs and defendants at the time of filing of this suit. The proposed amendment is very much necessary to adjudicate the matter in controversy and to clinch the matter in dispute between the parties. In the present case on hand, the defendants have not filed any objection to the above application after giving sufficient opportunity.

9. At this juncture, I would like to refer Order VI Rule 17 of CPC which reads as follows :

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

On perusal of the aforesaid provision, it is clear that the parties to the suit are permitted to bring forward amendment to their pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between them. If such application is made after commencement of the trial, in that event, the court has to

arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial.

10. Admittedly, it is a suit for partition and separate possession against the defendants in respect of suit schedule properties. In this suit, the trial has not been commenced. In the instant I.A., the plaintiffs have not sought for amendment of the entire plaint, but he has sought for inclusion of additional schedule properties, which were left out in the plaint and also for correction of serial number of the suit schedule properties in a chronological order. If the proposed amendment is allowed, it will not take away the rights of the plaintiffs and also it will not change the nature of the suit as well as cause of action. If the application is allowed, there is no harm caused to the other side. The proposed amendment sought in the plaint is very much necessary for the purpose of determining the real question in controversy between the parties. For considering all these reasons, I answer Point No.1 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.III filed by the plaintiffs under Order VI Rule 17 of CPC is hereby allowed on payment of cost of Rs.300/-.

The plaintiffs are hereby directed to carry out the necessary amendment in the plaint and to file amended plaint copy in time.

For compliance of court order by:

07.06.2024

sd/-

(SHIVAKUMAR.R)
CIVIL JUDGE & ADDL.
J.M.F.C., TARIKERE.