

KADG220002322020



**IN THE COURT OF THE PRL. CIVIL JUDGE &
J.M.F.C., CHANNAGIRI**

-: PRESENT :-

**Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.**

Dated: This the 19th Day of July 2023.

Ex.No. 04/2020

Decree Holder : Sri. H.M. Puttaswamy dead by LR's

V/s

Judgment Debtor : Sri. M.D.Kenchyappa dead by LR's

I.A. NO.III

Applicant/Decree Holder : Sri. H.M. Puttaswamy dead
by LR's

V/s

Respondent/Judgment Debtor : Sri. M.D. Kenchappa
dead by LR's

ORDER ON I.A.No.III

The decree holder filed the instant application under Order 6 Rule 17 of CPC seeking permission to amend the petition. It is filed when the matter set up for further cross examination of PW.1.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

The decree holder has sworn the affidavit and stated on oath that, the petition on hand is filed by the decree holder and his 3 brothers to take legal action against judgment debtor since they violated the decree passed in O.S.No.419/1975 on the files of Pri. Munsiff and JMFC Court at Bhadravathi. The property involved in this petition is Sy.No.84, it is assigned with Sy.No.84/10P2. At the time of preparing the petition, the property was wrongly mentioned as Sy.No.94 instead of Sy.No.84. It was typographical error and bonafide mistake. Which came to the knowledge of decree holder recently. Thus, the decree holder prays to allow the application.

3. Statement of objections filed by the JD No.1(a) and (b);

The Judgment debtors denied the entire contents of the affidavit. They submitted that, the contents of the affidavit and the prayer of the application are not tenable in the eye of law, are created for the purpose of this petition. The matter has set for further cross examination of PW.1 and at this stage of the matter, the application on hand is absolutely untenable and deserves to be dismissed. The decree holder employed the application on hand to cause hardship and to loss to the judgment debtors. The decree holders are not in possession of

petition property and have not described petition schedule properly as said survey number contains as much as 155 Acres of land. The decree holders intend to change the petition as per their wish and will and that can not be permissible under law. Therefore, the judgment debtors prays to dismiss the application with cost.

4. Based on the rival contentions raised by the decree holders and judgment debtor No.1(a) and (b), the following points would emerges for my consideration;

:P O I N T S:

1. Whether the proposed amendment is essential to adjudicate the matter?

2.What Order?

5. My answers to the above points are as under ;

POINT No.1 : In the Affirmative.

POINT No.2 : As per the final order for the
Following ;

:R E A S O N S:

6. POINT NO.1:- The decree holders have come up with the application for amendement of the petition in so far as the survey number of the petition schedule property is concerned. It is the specific assertion of the decree holders that, due to typographical error and bonafide

mistake, the property number was wrongly mentioned in petition schedule as Sy.No.94, instead of Sy.No.84. Thus, the same needs to be rectified for proper adjudication of the matter.

7. In contrasting to the same, the judgment debtor No.1(a) and (b) filed objection statement and contended that, all the grounds narrated under the affidavit filed in support of the application are untenable in law and the application employed to cause harassment to the said judgment debtors. The decree holders have not described the property with accurate details and therefore, the application needs to be rejected.

8. Having taken note of the rival contentions and the specifications of the parties, I have carefully perused the judgment and decree passed by the Hon'ble Prl. Munsiff JMFC Court at Bhadravathi, dt: 06.06.1978, which is finding place at Ex.P-1. Whereunder, the decree depicts the schedule of the property and wherein, the suit schedule property was earmarked as Sy.No.84 of Benkikere Village, Channagiri Taluk. In addition to this, I would like to take note of the petition filed by the decree holders. Whereunder, the decree holders have sought to enforce the decree passed in O.S.No.419/1975. Thus, it is quite clear that, the decree holders sought to enforce the decree produced as per of Ex.P-1 and therefore the subject matter of this petition is Sy.No.84 and not the Sy.No.94.

The assertion of the decree holder as to typographical error and bonafide mistake is absolutely probable and bound to happen in the normal course of the human beings. Such mistakes needs to be rectified even after passing the preliminary decree or final decree to do the justice to the parties subject to certain terms and conditions provided that the application is bonafide, it does not cause injustice to otherside, does not affect the rights already accrued to the otherside. It is in this regard, I would like to take note of the decision reported in **(2009) 11 SCC 308: 4 SCC (Civ) 529 : 2009 SCC Online SC 322** in the matter between **Peethani Suryanarayana and Another v/s Repaka Venkata Ramana Kishore and Others**. Which reads as under:

“A. Civil Procedure Code, 1908 – Or. 6 R. 17 – Amendment of plaint – Amendment after passing of final decree – Permissibility – Held, court holds the power to allow such amendment provided: (i) application is bona fide, (ii) does not cause injustice to other side, and (iii) does not affect the right(s) already accrued to the other side.”

9. Having referred the sacred ratio of the Hon'ble Apex Court of India, the observations and opinion expressed by this court are supported with the law declared by Hon'ble Apex Court of India. In the case on hand also the proposed amendment would in any way

affect the right of judgment debtors, affect the rights which already accrued to the parties. The application seems to be bonafide one as typographical errors might have happened in day today work style of the human being. Thus, in my considered opinion, the decree holders have made out sufficient grounds to consider their application and also have proved their bonafides in placing it at this stage. Therefore, the **point No.1** held in the **Affirmative**.

10. Point No.2:- For the for going reasons, the following:

ORDER

I.A.No.III filed U/O.6 Rule 17 of CPC is hereby allowed on cost of Rs.100/-.

Consequently, the decree holders are permitted to carryout the amendment as per schedule given under the application and furnish the amended petition accordingly.

For amendment and amended petition.

Call on 02.08.2023.

(Dictated to the stenographer and corrected and then pronounced by me in the open court on this **19th Day of July 2023.**)

Sd/-

(Shri. Siddalingayya B. Gangadharamath)

Date: 19.07.2023

Prl. Civil Judge & J.M.F.C.,

Place: Channagiri.

Channagiri.