

IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., DHARWAD.

Present: SRI.ANAND S KARIYAMMANAVAR
B.A., LL.B(Hon's)
IV Addl. Senior Civil Judge
& J.M.F.C., Dharwad.

OS No.95/2018

Dated : 25th day of September 2024

Plaintiff/s : Mashabee A.Ghatin and others.

(R/by Sri.A.L.N, Adv)

V/s.

Defendant/s: Moulasab A.Ghatin and others.

(D1 to 3 R/ by Sri.I.I.J, Adv)
(D4 R/ by Sri.R.A.S, Adv)

PARTIES TO IA NO.XII

Applicant/s : Mashabee A.Ghatin and others.

V/s.

Opponent/s: Moulasab A.Ghatin and others.

ORDER ON I.A.NO.XII

The plaintiffs filed this application under Order 6 Rule 17 R/w Section 151 of CPC thereby sought to amend the plaint by amending names of the plaintiffs and defendants

and also by including additional properties and also by amending prayer and including genealogy in the plaint.

2. The plaintiff No.3 filed his affidavit in support of this application and contended that, recently plaintiffs have changed their counsel to conduct this case and recently he came to know about certain bonafide mistakes in the plaint and also non inclusion the properties of the plaintiffs and defendants and not mentioning proper genealogy in the plaint and the said non mentioning of the proposed amendment due to inadvertence and inspite of due diligence proposed amendment could not bring at the earlier stage, thereby sought to allow the present application.

3. On the contrary, the counsel for the defendant No.1 filed objection to this application and contended that, the present application is filed at the fag end of the proceedings only to fill up the lacuna and properties which are plaintiffs intending to include in the suit also belongs to other share holders of the said property and without impleading those co-sharers the plaint cannot be amended and plaintiffs not sought for permission for insertion of genealogy as schedule 'B', thereby

sought to dismiss the application.

4. I have heard the arguments of both side and counsel for the defendants have filed written arguments and perused the material available on record.

5. Now the following points arise for my consideration.

1.	Whether the plaintiffs prove that inspite of their due diligence they could not amend plaint before commencement of trial ?
2.	What order ?

6. My answers to the above points are as under:-

Point No.1:	In Affirmative.
Point No.2:	As per the final order, for the following:

REASONS

7. **Point No.1:-** This is a suit instituted by the plaintiffs against the defendants for the relief of partition and separate possession of the suit properties. In the proposed amendment the plaintiffs intending to insert correct name of the parties as per document and also intending to insert additional suit properties which were left out in plaint and also

plaintiffs intending to amend prayers by adding schedule 'B', genealogy. The plaintiff No.3 in his affidavit specifically stated that he has recently changed his counsel and recently he came to know about the bonafide mistakes which are occurred in the plaint. Further on perusal of the material available on record, the proposed amendment is neither going to change cause of action nor nature of the suit is going to be changed. At the time of argument the learned counsel for the plaintiffs has relied upon the following citations.

- 1.AIR 2008 SC 1960,**
- 2. AIR 2007 SC 2577,**
- 3.AIR 2008 SC 2139,**
- 4. 2023(1) KCCR 1 (SC).**
- 5. AIR 2006 SC 1674.**

8. By relying on these citations in which Hon'ble Supreme Court held that plaint can be amended even at appellate stage and plaint can be amended, if it is not affecting the nature of the suit and cause of action and delay in bringing amendment can be compensated by way of cost. Therefore,

the proposed amendment in this application is not going to affect the cause of action and nature of the suit and if the application is not allowed it is the plaintiffs who will suffer greater hardship than the defendants. However, the delay in filing application can be compensated by way of cost. Hence, for the above stated reasons, I have answered **point No.1 “in Affirmative”**.

9. **Point No.2:-** For the reasons stated while discussing **point No.1**, I proceed to pass the following:-

ORDER

The I.A.No.12 filed by the plaintiffs under Order 6 Rule 17 R/w Section 151 of CPC is hereby allowed with cost of RS.500/-.

The plaintiffs shall carry out the amendment and file amended plaint.

No order as to costs.

(Dictated to stenographer, typed by her, corrected and then pronounced by me in the open court on 25th day of **September 2024**)

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For order
25-09-2024

(Order pronounced in the open Court vide separate order)

ORDER

***The I.A.No.12 filed by the plaintiffs
under Order 6 Rule 17 R/w Section 151 of
CPC is hereby allowed with cost of RS.500/-.***

***The plaintiffs shall carry out the
amendment and file amended plaint.***

No order as to costs.

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

