

KAHS510006412019



Presented on : 29-06-2019

Registered on : 29-06-2019

I.A.No.III filed on : 24-08-2022

I.A.No.III Decided on : 28-06-2023

Duration : 3 years, 11 months, 29 days

IN THE COURT OF CIVIL JUDGE & JMFC,
AT: BELURU

Presided Over by Sri. PRASANNA KUMAR C., B.A.L, LL.B.,
Civil Judge & JMFC, Belur.

Dated this the 28th day of June, 2023

O.S./233/2019

Between:

Smt.Thimmamma and others **Plaintiffs**

(Shri.B.S.G.Swamy, Advocate for plaintiffs)

And:

Shri.Dharnegowda and others **Defendants**

(Shri.C.M.Chandregowda - Advocate for defendants)

Parties to the application I.A. No.III

Applicants: **Thimmamma and others**

v/s

Respondents: Dharanegowda and others

ORDERS ON I.A.No.III

This application is filed by the plaintiff under Order 6 Rule 17 of Civil Procedure Code seeking for amendment of the plaint by replacing the initials in 2nd, 7th and 10th line of plaint and to change the year from 1998 to 1988, for replacing the word plaintiff No.1 with defendant No.2 in para No.2, 5th line of the plaint and to replace the description of boundaries in the schedule of the plaint i.e., to incorporate the land of Channegowda after Kenchegowda towards Eastern side and to incorporate properties of defendants towards northern side.

2. In the affidavit filed in support of the application, the plaintiff has contended that the present suit is filed by them seeking for the relief of declaration to declare that plaintiffs are the owners of the suit property bearing Sy.No.18/2 measuring 1 acre 14 guntas situated at Tendekere Village, Madihalli Hobli, Belur Taluk and also for declaration to declare that the partition deed dated 25-02-2016 executed in between defendant No.1 and 2 is not binding on the rights of the plaintiff and for consequential relief of permanent injunction. It is contended by the plaintiff that by oversight and typographical error, the initials and the year has been

typed wrongly. The same came to the knowledge of plaintiff and immediately he has filed this application.

3. The defendants have filed objections to the application stating that the present application is not maintainable and the same would change the nature of the suit as well as the cause of action. Though the suit is of the year 2019, the plaintiffs have deliberately filed this application without explaining the reasons for causing delay. Therefore, the defendants have sought for dismissal of the application.

4. Basing on the application, affidavit and objection statement, the following points would arise for consideration of this court.

POINTS

1. Whether the Plaintiff has made out grounds for allowing the application for amendment?

2. What order?

5. Heard arguments of both sides. On the basis of Application, affidavit, objection statement, plaint averments and also all the materials available on record, answer of this court to the above points is as under:

Point No.1: **In the Affirmative**

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

REASONS

6. **Point No.1:** The present suit is filed by the plaintiffs against the defendants seeking for the relief of permanent injunction as stated above.

7. In this case, the evidence is not yet commenced and when the I.A.No.2 application filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC for order of temporary injunction was under consideration, the defendant No.1 reported to be dead and his Legal Representatives have been brought on record. At the same time, the present application is also filed. Plaintiffs found to have exercised due diligence by seeking amendment before the commencement of the evidence as provided under Order 6 Rule 17 of CPC. However, this suit is of the year 2019 and instant application came to be filed in the year 2022 i.e., after lapse of 3 years. It is the objection raised by the defendants that if the application is allowed, the nature of the suit and cause of action would change. However, this court is of the opinion that mere changing the initials and year and also the description of the boundaries would not cause any prejudice to the defendants. But on the other hand, the same would assist this court for efficacious disposal of the suit on merits. Therefore, no hardship or prejudice will be caused to the defendants if the application is

allowed. The defendants would also get an opportunity to file their additional written statement if any. However the delay caused in filing this application is to be compensated to the defendants by imposing cost. Therefore, considering the grounds urged by the plaintiff, the application requires to be allowed by imposing cost. Accordingly, this court answered point No.1 in the **Affirmative.**

8. **Point No.2:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

ORDER

- I.A.No.III filed by the plaintiff under order 6 Rule 17 of Civil Procedure Code is hereby allowed on cost of Rs.300/-.
- The plaintiff is permitted to carry out necessary amendment of the plaint as sought for in the application and file amended plaint.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 28th day of June, 2023)

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**

(Order on I.A. No.III signed and pronounced vide separate order):

ORDER

- I.A.No.III filed by the plaintiff under order 6 Rule 17 of Civil Procedure Code is hereby allowed on cost of Rs.300/-.
- The plaintiff is permitted to carry out necessary amendment of the plaint as sought for in the application and file amended plaint.
- For cost, carrying out amendment and amended plaint by : **14-08-2023.**

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**