

KAHS610001302005



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT  
CHANNARAYAPATNA**

**PRESENT:-**        **Sri. DEEPU B.C.,** B.A.L., LL.B.,  
Prl. Civil Judge & JMFC,  
Channarayapatna.

**Dated this the 5<sup>th</sup> day of November 2024**

**F.D.P. No.8/2005**

**Petitioner/s**        :        Jayamma and others

**V/s**

**Respondent/s**     :        Nagaraju & others

**PARTIES TO I.A. No.8**

Applicant/s :- Vijaya (Petitioner No.3)

**V/s**

Opponent/s :- Nagaraju & others

**ORDER ON I.A. No.8**

The instant application is filed by the petitioners under Order 6 Rule 17 R/w Sec.151 of CPC on 27-08-2024 seeking

permission to amend the petition as per the order dated 31-08-2015.

**2.** In support of the application affidavit is filed, wherein, the petitioner No.3 has sworn to fact that she and other petitioners have filed a suit in O.S. No.5/1994 against the respondents for the relief of partition and separate possession claiming  $\frac{1}{4}$ <sup>th</sup> share in the schedule properties and said suit came to be decreed. Being aggrieved by the said Judgment, the respondents preferred an appeal in R.A. No.15/2007 and the same came to be dismissed by modifying  $\frac{1}{4}$ <sup>th</sup> share into  $\frac{1}{5}$ <sup>th</sup> share. But due to oversight, in the petition,  $\frac{1}{5}$ <sup>th</sup> share is not mentioned, it was wrongly mentioned as  $\frac{1}{4}$ <sup>th</sup> share. Further, the previous counsel has filed an application under Order 6 Rule 17 of C.P.C. praying to amend the plaint in original suit and preliminary decree by inserting boundaries to Item No.1 to 6 properties and the same came to be allowed vide order dated 31-08-2015. Accordingly, the counsel for the petitioner has carried out amendment to the plaint as well as preliminary decree, but no amendment has been carried out in the petition. Further due to oversight, Item No.7 property is not included in the petition and further the extent of Item No.6 is not included in the schedule of the petition, hence it would require to permit the petitioners to rectify the said mistake by way of amendment, accordingly, they prayed to allow the application.

**3.** On the other hand, the counsel for the respondent No.2 filed an objection by denying the entire averments made in the affidavit annexed to the application and contended that Item No.7 house property originally belong to Nanjappa S/o Thopegowda, but

he was not made as a party in the petition. In order to grab the property, they have include the said Item No.7 property. Further, after demise of said Nanjappa, his son Ramegowda is in possession and enjoyment of the said Item No.7 property. In spite of that he was also not made as a party in this petition. Further, the boundaries shown in the schedule properties are not correct. Only in order to drag on the proceedings, the petitioners have come up with this false application. Accordingly, he prayed to reject the application.

4. Heard the arguments on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as under :

1. *Whether the petitioners have made out sufficient grounds to allow them to amend the petition as sought for ?*

2. *What order?*

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

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

Point No. 2 :- As per final order.

For the following :

**:: REASONS ::**

7. **Point No.1** :- As could be seen from the record, the petitioners herein have filed a suit in O.S. No.5/1994 against the

respondents for the relief of partition and separate possession claiming  $\frac{1}{4}$ <sup>th</sup> share in the suit properties and said suit came to be partly decreed vide Judgment dated 02-01-2001 by allotting  $\frac{1}{4}$ <sup>th</sup> share to the petitioners. Being aggrieved by the said Judgment, the respondents herein preferred an appeal in R.A. No.15/2007 before the Hon'ble Senior Civil Judge, Channarayapatna and said appeal came to be dismissed by modifying the  $\frac{1}{4}$ <sup>th</sup> share into  $\frac{1}{5}$ <sup>th</sup> share vide Judgment dated 21-01-2009. In pursuance to the said preliminary decree, the petitioners have filed the present petition for drawing final decree.

**8.** During the pendency of the petition, the earlier counsel for the petitioners has filed an I.A. No.2 U/o.6 Rule 17 R/w Sec.151 and 152 of C.P.C. seeking amendment to the plaint as well as preliminary decree by inserting the boundaries and change of extent in respect of Item No.1 to 6 properties and also include the additional properties i.e. Item No.8 to 13 in the petition and the same was objected by the respondents and finally it came to be partly allowed vide order dated 14-08-2015 by permitting the petitioners to include the boundaries and change of extent in respect of Item No.1 to 6 properties, but they were not permitted to include the additional properties i.e. Item No.8 to 13 in the petition. Accordingly the counsel for petitioner has carried out amendment to the plaint and preliminary decree, but no amendment has been carried out to the present petition. Further, on careful perusal of the petition averments, the petitioner has not mentioned the extent of Sy. No.33/3 in Item No.6 and also not include the Item No.7/house property in the petition. Further, the

petitioners have given common boundaries to the Item No.3 and 4 properties and same is contrary to the plaint averments as well as preliminary decree. Now the petitioners are intends to amend the petition as per the order passed by this court on 14-08-2015 and also mentioned the extent of Item No.6 property and include item No.7 property and furnish separate boundaries to the Item No.3 & 4 properties by way of amendment.

**9.** It is pertinent to note that if at all the petitioners are not permitted to carry out the amendment to the petition, the properties shown in the petition and properties shown in the plaint in original suit as well as the preliminary decree are contrary to each other and final decree could not be drawn. So, under these circumstances, it is very much necessary to permit the petitioners to amend the petition as sought for. Though the respondent No.2 has denied the claim of the petitioners, he has not denied the averments made in the affidavit as well as previous orders in respect of amendment to the plaint as well preliminary decree. Moreover, the non-incluser of the owners of the Item No.7 in the petition, it can be considered at the time of Judgment. At this juncture, the objection raised by the petitioners cannot be sustained. Therefore, in view of the above discussion, this court is of humble opinion that the petitioners have made out sufficient grounds allow them to amend the petition as sought for. Thus, point No.1 is answered in the '**Affirmative**'.

**10. Point No. 2 :** In the light of forgoing discussion, this court proceeds to pass the following:

**ORDER**

I.A.No.8 filed by the petitioners U/o.6 Rule 17 R/w Sec.151 of CPC is hereby allowed on cost of Rs.1000/-.

The petitioners are permitted to amend the petition as sought for.

(Dictated to the stenographer, transcription typed by her, corrected signed & then pronounced by me in the open court on this **5<sup>th</sup> day of November 2024.**)

(Deepu B.C.)  
Prl. C.J. & JMFC,  
Channarayapatna.