

IN THE COURT OF CIVIL JUDGE AND JMFC AT
HOLENARASIPURA

Present:- Sri. Chandrashekhara.P.Diddi, B.A., LL.B,
Civil Judge and J.M.F.C,
Holenarasipura.

Dated this the 26th day of July, 2016

O.S.No.134/2008

Between

Rani : Plaintiff

(By Sri.B.N.R.,Adv.,)

V/s

Chikkamallamma and others : Defendants

(D1 & 2 By Sri.P.D.D.,Adv.,
D3, 6 to 11 By Sri.H.S.A.,Adv.,
D12 By Sri.R.S.Adv.,
D4 & 5 Ex-parte)

ORDERS ON IA-XX

Rani : Applicant/Plaintiff

V/s

Chikkamallamma and others : Defendants

ORDERS ON IA-XX

The plaintiff has filed IA.No.XX under order 6 rule 17 of C.P.C
prays for amendment of plaint.

2. In the accompanying affidavit of IA the plaintiff submitted
that the plaintiff filed the suit for partition and separate possession.

Item no.1 property belongs to Kamasamudra village. It stands in the name of the defendant no.3. The defendant no.3 executed the gift deed in favour of the defendant no.6 and his daughter on 18/04/2013. The said gift deed is the registered gift deed. Hence the plaintiff prays for insertion of word in para no.9 as ಈ ಪ್ರಕರಣದ 3ನೇ ಪ್ರತಿವಾದಿ ಎಂ.ಶಿವರಾಜ ಇವರು ತನ್ನ ಮಗಳು ಹಾಗೂ ಈ ಪ್ರಕರಣದಲ್ಲಿನ 6ನೇ ಪ್ರತಿವಾದಿ ಅನುಸೂಯ ಎನ್ನುವವರಿಗೆ ದಿನಾಂಕ: 18-04-2013 ರಂದು ದಾವಾ ಷೆಡ್ಯೂಲ್ 1ನೇ ಐಟಂ ಆಸ್ತಿಯನ್ನು ನೊಂದಾಯಿತ ದಾನಪತ್ರ ಮಾಡಿರುವುದು ಈ ವಾದಿಯನ್ನು ಬದ್ಧಪಡಿಸುವುದಿಲ್ಲ in front of the word of ಬದ್ಧಪಡಿಸುವುದಿಲ್ಲ and insertion of para no.3 in prayer column as 'ಈ ಪ್ರಕರಣದ 3ನೇ ಪ್ರತಿವಾದಿ ಎಂ.ಶಿವರಾಜ ಇವರು ತನ್ನ ಮಗಳು ಹಾಗೂ ಈ ಪ್ರಕರಣದಲ್ಲಿನ 6ನೇ ಪ್ರತಿವಾದಿ ಅನುಸೂಯ ಎನ್ನುವವರಿಗೆ ದಿನಾಂಕ: 18-04-2013 ರಂದು ದಾವಾ ಷೆಡ್ಯೂಲ್ 1ನೇ ಐಟಂ ಆಸ್ತಿಯನ್ನು ನೊಂದಾಯಿತ ದಾನಪತ್ರ ಮಾಡಿರುವುದು ಈ ವಾದಿಯನ್ನು ಬದ್ಧಪಡಿಸುವುದಿಲ್ಲ ಎಂದು ಆದೇಶ ಮಾಡಬೇಕಾಗಿಯೂ'.

Accordingly prays for allowing the application.

3. The defendants no.3, 5 and 6 to 9 filed objection to the application. In the objection the defendants submitted that the application is not maintainable either in law or on facts of the case. The plaintiff is not at all having right over the share of the Shivaraju's property. The plaintiff has right over the share of Mahadevaiah's property. The Shivaraju property is undivided property. The application is barred by law of limitation. On these grounds prays for dismissal of the application.

4. The defendant no.12 also filed objection to the application. In the application the defendant no.12 submitted that the defendant no.12 did not know whether item no.1 property is the joint family property or not. The plaintiff has filed this suit in the year 2008. After lapse of 8 years she has filed this application without any ground. The delay in filing the application is not properly explained. The plaintiff has filed this application after lapse of 3 years from the date of execution of the gift deed. On these ground the application is not maintainable. Hence prays for dismissal of the application.

5. Heard the argument of both the counsels.

6. The point that arises for my consideration is as follows.

1. Whether the proposed amendment is necessary for disposal of the case and what order?

7. I answer the above point is as follows.

Point No.1:- In the Affirmative and

as per the final orders for the following reasons.

REASONS

8. **Point No.1:-** On perusal of the order sheet, the suit is filed in the year 2008. The evidence of the plaintiff is not at all completed. The plaintiff has filed this application contending that the defendant no.3 has executed the gift deed on 18/04/2013 in respect of item no.1

property in favour of the defendant no.6. Therefore the plaintiff intended to insert the said fact in the plaint. Further submitted that she has come to know about the said fact in the year 2016. Hence prays for amendment of the plaint. The plaintiff produced the certified copy of the gift deed. On perusal of the gift deed, the defendant no.3 executed the gift deed in favour of the defendant no.6 in respect of item no.1 property. In this application the plaintiff sought for ancillary relief. The main relief is partition. On careful perusal of the entire plaint averments if the proposed amendment is allowed the nature of the suit and cause of action does not change. Further the proposed amendment is very necessary for disposal of the case.

9. In this regard I would like to rely on the Hon'ble Supreme Court decision reported in AIR 2006 SC 1647 between Rajesh Kumar Aggarwal V/s K.K.Modi. In the said decision the Hon'ble Supreme Court held that

The provision is partly mandatory and party directory. The real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not; the amendment will be refused. The merits of

proposed amendment should not be gone into at the stage of allowing amendment.

As per the Hon'ble Supreme Court decision the real test is whether the proposed amendment is necessary or not. As per the aforesaid decision, this court opines that the proposed amendment is necessary for determining the controversy between the parties. Considering all these grounds I am of the opinion that the application is deserves to be allowed. Accordingly, I answer the above point in the affirmative. For the above stated reasons I proceed to pass the following order.

::O R D E R::

IA. No. XX filed by the plaintiff under order 6 rule 17 of C.P.C is hereby allowed.

It is directed to the plaintiff to amend the plaint as prayed in the application and to file the amended plaint within 14 days from the date of this order.

Further it is directed to both the parties to co-operate in this case, for disposal of the case.

No order as to cost.

(Dictated to stenographer and transcribed by her revised and corrected by me then pronounced in the open court dated this 26th day of July, 2016)

**(Chandrashekhara.P.Diddi)
Civil Judge and J.M.F.C,
Holenarasipura.**