

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**  
***B.Com., LL.B.,(spl)***  
Civil Judge and JMFC.,  
Savanur.

**ORIGINAL SUIT NO. 87/2018**  
**Dated this 25<sup>th</sup> day of July, 2023**

**PLAINTIFF:** Kamma @ Kavya W/o Ramesh Madloor,  
Age : 32 years, Occ: Household work,  
R/o : Mannur, Tq : Dist : Haveri.

**Vs**

**DEFENDANT:** Shankargouda S/o Tirakanagouda Patil,  
Age : 58 years, Occ : Agriculture,  
R/o : Ichchangi, Tq : Savanur,  
Dist : Haveri.

**IA No.IV**

**Applicant:** Kamma @ Kavya W/o Ramesh Madloor,  
**(Plaintiff)**

**Vs**

**Opponent:** Shankargouda S/o Tirakanagouda Patil,  
**(Defendant)**

**ORDER ON IA NO.IV**

The plaintiff has filed this application U/O.6 Rule 17 of Code of Civil Procedure for seeking permission to carry out the amendment in the plaint.

2. Plaintiff Smt. Kamma @ Kavya W/o Ramesh Madloor has sworn in an affidavit accompanying with IA No.4, wherein she stated that the suit schedule-A properties were ancestral properties of herself and defendants. These properties have been joint possession of herself and defendants. The defendants appeared and filed written statement. Wherein they have contended that all joint family properties not included in the suit. On verification she found that she had not included the house and open sites properties. Hence, she intended to include the house, backyard and open spaces in the suit. At the time of filing of suit the documents in respect of house properties not available. Hence, she has not included the said properties. She has not intentional left the said properties. Therefore, she prayed to allow the application.

3. The defendants filed objection by contending that application is not maintainable either in law or facts. The plaintiff filed this suit in the year 2018 and filed this application when it was posted for evidence. The plaintiff filed this application to drag the proceedings. She is also not implead all members of the joint family. Therefore suit is suffering from non-joinder of necessary parties. Therefore they prayed to reject the application.
4. Heard both the sides and perused the materials on record.
5. The following points arise for my consideration:

**POINTS**

- 1) **Whether the proposed amendment is necessary to determine real controversy between the parties?**
  - 2) **Whether the plaintiff explained the due diligence?**
  - 3) **What order ?**
6. My answers to the above points are as follows:
- Point No.1 & 2 : In the Affirmative.**
- Point No.3 : As per final order for the following:**

**:-REASONS:-**

**7. Point No.1 & 2 :-** The plaintiff has filed this application at the stage of plaintiff evidence.

**8.** The plaintiff filed present suit for partition and separate possession in respect of suit schedule properties by metes and bounds against the defendants by contending that the suit schedule properties are the ancestral properties of herself and defendants.

**9.** Per contra, the defendants denied the plaintiff averments but admitted the relationship between the plaintiff and them. They have contended that suit is suffering from non-joinder of necessary parties and non-inclusion of all properties. Therefore, on the basis of the contention of the defendants in written statement the plaintiff filed this application to include the house and open sites properties in the suit.

**10.** The counsel of the plaintiff argued that the amendment sought is inclusion of other house and open sites of joint family. It will not change the nature of the suit and not change the cause of action. Therefore, he prayed to allow the application.

**11.** On the other hand the defendant filed objections contending that after three years of filing of the suit filed this application. The suit is also suffering from non-joinder of necessary parties but without made the five persons as necessary parties filed this application to drag the proceedings. Application is not maintainable. Hence, he prayed to dismiss the IA No.4 with cost.

**12.** On perusal of the provision Under Order.6 Rule 17 it is clear that the party can amend his pleadings at any stage of the proceeding, however the provisions to the order 6 Rule 17 which says “ After commencement of trial unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trail”. Now the case on hand is in the stage of plaintiff evidence and proposed amendment has been sought through present IA No.4 before commencement of trail.

**13.** The proposed amendment which sought is for inclusion of all joint family properties. Otherwise the suit will not maintainable. Therefore it is necessary to allow. Otherwise it leads to multiplicity

of proceedings. Apart from that if allow the application nature of the suit will not change and no injustice will be caused to the defendants if the present IA No.4 is allowed. As such this court has answered the **point No.1 and 2 in the Affirmative.**

**14. Point No.3 :-** In view of the above discussion, I proceed to pass the following;

**ORDER**

**The I.A. No.4 filed U/o 6 Rule 17 of Code of Civil Procedure by the plaintiff is here by allowed.**

**Plaintiff is permitted to carry out the amendment as per proposed amendment, as per rule 18 of CPC.**

**No order as to cost.**

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 25<sup>th</sup> day of July 2023)

CJ & JMFC., Savanur.

