

**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.

OS NO.62/2016

Dated this 15th day of December, 2022

PLAINTFFS: Pyarijan W/o Moulasab Tahasildar,
Age : 39 years, Occ : Agriculture &
Household work, R/o : Belagavi,
Tq : Belagavi, Dist : Belagavi and others.

Vs

DEFENDANTS: Basasab S/o Akbarsab Doddamani,
Age : 55 years, Occ : Agriculture,
R/o : Govanal, Tq : Savanur,
Dist : Haveri and others.

IA No.VII

Applicant: Mahaboobsab S/o Akbarsab Doddamani.
(Plaintiff No.2)

Vs

Opponents: Basasab S/o Akbarsab Doddamani,
(Defendant No.1) and others.

ORDER ON IA NO.VII

The plaintiffs have filed this application under Order 6 Rule 17 of Code of Civil Procedure for seeking permission to carry out amendment in plaint as per proposed amendment.

2. The plaintiff No.1 Mehaboobsab S/o Akbarsab has sworn in affidavit accompanying with IA No.7, wherein he stated that they have filed this suit for partition and separate possession in respect of their legal share in suit schedule properties. At the time of filing of suit boundaries of suit schedule 2A and 2B properties by over sightly changed. He has shown boundaries of 2B properties to the 2A vice versa, shown boundaries of 2A properties to 2B, hence it should be corrected. Further in page No.2 12th line to 15 line there was some mistake, accordingly in page No.3. 1 to 4th line also there were some mistakes as explained in the proposed amendment. Therefore it is necessary to correct the same. Otherwise it will causes hardship to the plaintiffs. Hence he prayed to allow the application.

3. The defendant No.2 and 3 have contested the IA No.7 by filing objections, wherein contended that the IA is not tenable

under law and facts. The reasons assigned to file the application regarding the defect of the boundaries are not satisfied. There are contradictory in the pleadings. They have filed OS No.76/2013 before this court and failed to proceed the case, Hence it was dismissed for non-prosecution. The plaintiffs have filed this application to drag the proceedings. If allow the application nature of suit will be changed. Hence, they prayed to reject the application.

4. Heard and perused the materials on record.
5. The following points arise for my consideration:

POINTS

- 1) **Whether the proposed amendment is necessary to decide the 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 :- Plaintiffs filed this application at the stage of cross of PW.1

8. The plaintiffs have filed this suit for partition and separate possession by stating that the suit schedule properties are owned and possessed by Akbarsab Peerasab Doddamani. After his death the plaintiffs and defendant No.1 inherited the suit properties but the defendant No.2 and 3 by calling themselves as wife and son of defendant No.1 started interference in the joint possession of the plaintiffs. Therefore, they filed this suit.

9. The defendant admitted that relationship between the plaintiffs but contended that after death of Akbarsab the plaintiff No.2 and defendant No.1 inherited the suit properties and have been in possession as tenant in common. But the defendant No.1 left the village since 18 years back. The defendant No.2 and 3 are wife and son of defendant No.1.

10. The defendants not denied the existence of suit schedule properties. The plaintiffs wants to correct the boundaries of suit schedule properties. The defendant not denied that the said

boundaries are false or wrong. The defendants not denied the boundaries of suit schedule properties mentioned in the affidavit. Therefore if allow the application no hardship or prejudice will cause to the defendants.

11. The trial commenced but it is in beginning stage. Trail not yet completed. Further if allow the application nature of the suit will not change. If reject the application the identification of the suit properties will be difficult and it leads multiplicity of proceedings. Therefore, to avoid the same it can be allowed. It seems to be typographical error. Therefore, application can be allowed. Otherwise it will lead multiplicity of proceedings in respect of identification of suit schedule properties. Hence, this Court has answered **point No.1 and 2 in the Affirmative.**

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

ORDER

**The I.A. No.7 filed U/O.6 Rule 17
of Code of Civil Procedure by
plaintiffs is hereby allowed.**

**Plaintiffs are permitted to carry
out the amendment in the plaint as
per Rule 18.**

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 15th day of December 2022)

CJ & JMFC., Savanur.

(Order pronounced in the open court vide separate)

ORDER

The I.A. No.7 filed U/O.6 Rule 17 of Code of Civil Procedure by plaintiffs is hereby allowed.

Plaintiffs are permitted to carry out the amendment in the plaint as per Rule 18.

No order as to cost.

CJ & JMFC., Savanur.

