

IN THE COURT OF SENIOR CIVIL JUDGE ALAND
PRESENT

SRI.GANAPATI GURUSIDDA BADAMI., B.A. LLB (Spl)
SENIOR CIVIL JUDGE ALAND

DATED THIS 25th DAY OF JUNE 2019

O.S. No.03/2017

Sufiya Begum
W/o Abdul Majeed & others. ...Plaintiff

V/s

Syed Furkan Ali
S/o Syed Khursheed Ali & another ...Defendant.

:-ORDER ON I.A.No.3 U/O 6 RULE 17 OF CPC:-

Plaintiffs have filed this application for amendment of plaint as prayed in the application.

2. In the accompanying affidavit of the plaintiff, she has stated that, in this case, she has been recently examined in chief and while preparing for evidence, she came to know from the written statement of defendants that, defendant No.1 and 2 have obtained collusive decree in O.S.No.207/2009 dated 16-09-2009 in respect of suit land bearing Sy.No.80, measuring to an extent of 02 acres 04 guntas for which they were not party to the said proceedings. She has stated that, the suit property is family property and she

has got share in the said property and to defeat their rights and share, such a collusive, illegal and void decree is obtained and same is not binding on herself and defendant No.1 and 2 are not exclusive owners of the same. She has stated that, the amendment application is not time barred and it will not change the nature of suit. Therefore, she prayed to allow the application.

3. Defendant No.1 has filed objections to the application contending that, the husband of the plaintiff No.2 by name Abdul Rauf S/o Abdul Hammed Wadsankar, R/o Mumbai had purchased the land bearing Sy.No.80 to the extent of 04 acres from one Dattatraya through registered sale-deed about 25 years back and he orally gifted the land Sy.No.80 on 15-05-1997 in favour of defendant No.1 and 2 to an extent of 02 acres each and since the date of the said gift-deed, the defendant No.1 and 2 are in peaceful possession and enjoyment of the land Sy.No.80 to an extent of 04 acres without interference of anybody. It is also contended that, the plaintiffs are well aware about this fact and decree passed in O.S. No.207/2009. The relief sought by the plaintiffs under the proposed amendment is barred by limitation and will change the nature of the suit and if the said application is allowed, it will cause injustice and controversy and it will lead to multiplicity of the proceedings and it will effect the right of the defendants. Therefore,

it is prayed to dismiss the application.

4. Heard the learned counsels for both parties on the application and perused the materials on record.

5. Materials on record disclose that, plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession of their share in the suit properties. The defendants have filed their written statement and denied the contents of the plaint. They have taken specific contention that, the suit property bearing Sy.No.80 was purchased by husband of plaintiff No.2 by name Abdul Rauf S/o Abdul Hameed Wadsankar under registered sale-deed and out of love and affection, he gifted the suit property to the defendant No.1 and 2 and they have got decree in O.S. No.207/2009 dated 16-09-2009 from the Civil Court, Junior Division, Aland and they are claiming to be exclusive owners and in possession of the said property. Plaintiffs now wanted to amend the plaint on the ground that, the said decree is collusive decree and not binding upon them. It is contended by the learned counsel for plaintiff that, the plaintiff is sister of defendant and she filed the suit for partition after the death of her father and parties are Muslim and governed by Mohammedan law. He has also contended that, in Para No.2 of the written statement, the defendants have

taken contention that, in O.S.No.207/2009, decree has been passed dated 16-09-2009 between the defendants and Abdul Rauf who is the husband of plaintiff No.2 and plaintiffs are not party to the said suit and husband of defendant No.2 is son-in-law who redelivered the property to the family and this property also liable to be partitioned between the family members. He has contended that, it is the contention of the defendants that, Abdul Rauf compromised with them and orally gifted Sy.No.80 to the defendant No.1 and 2 and none of the plaintiffs were the parties to the said suit and they had no knowledge about the said decree and they came to know about decree only after filing the written statement by the defendants. He has also contended that, the proposed amendment will not change the nature of the suit and it will not change the cause of action and not barred by law. Therefore, he prayed to allow the application.

6. Learned counsel for the defendants has submitted that, the suit filed for partition and separate possession in respect of Sy.No.80 which is not ancestral property and husband of the plaintiff died about 50 years back and he gifted 02 acres each to the defendant No.1 and 2 when he was alive in the year 1991 and since then, the defendants are in possession and enjoyment of the

said property and to that effect, mutation has been effected in the year 1993 in the name of defendant No.1 and 2 and they have sold 04 acres to Dattatreya. It is also contended that, the decree passed in O.S.No.207/2009 against Abdul Rauf and the defendants have produced original sale-deed and Abdul Rauf gifted the property to the defendant No.1 and 2 and question of seeking amendment that decree is not binding does not arise at all. It is submitted by the defendants counsel that, plaintiff No.2 being wife of Abdul Rauf and plaintiff No.3 has been given to the brother of Abdul and plaintiff No.1 was also present at that time and Sy.No.80 was not the subject matter, question of seeking partition does not arise. He has contended that, Sy.No.80 is standing in the name of father and after his death, panchayat was convened and defendants asked plaintiff No.1 to 3 who told that, they did not want any share and taken cash and relinquished their share. Therefore, he prayed to reject the application.

7. Plaintiffs have filed this suit against the defendants seeking the relief of partition and separate possession of their share in the suit properties. The suit properties are the land bearing Sy.No.80, measuring to an extent of 12 acres 36 guntas and Sy.No.81/3 measuring to an extent of 02 acres 37 guntas of Padasavali Village

in Aland Taluka. Now the plaintiffs are claiming that, it is also the joint property and defendants are claiming that, the said property is purchased by late Abdul who orally gifted them and they are in possession and enjoyment of the said property. Whether the said property is gifted property or not is the question of fact which is to be decided after the trial. Whether plaintiffs have got any share or not is the question to be decided during the trial. The plaintiffs are claiming their legitimate share in the said property and on the other hand, the defendants have claiming exclusive ownership in respect of the said property. After filing the written statement, plaintiffs are claiming that, defendant No.1 and 2 obtained collusive decree which is not binding upon their share and they have got right, title and interest on the said property and claimed their title by way of amendment of plaint. Proposed amendment will not change the nature of the suit and relief sought in the suit and cause of action. Whether the decree obtained in O.S.No.207/2009 is collusive or not will be question to be decided during the trial. Even whether the plaintiffs are having right or not is the question to be decided during the trial. If the proposed amendment is not permitted, the plaintiffs will be unable to establish their right in the said property and they will be put to loss and hardship and on the contrary, no kind of loss and hardship will be caused to other side.

So, I feel it is just and proper to permit the plaintiffs to amend the
plaint as prayed in the application. Hence, I pass the following:-

ORDER

**I.A.No.3 under Order 6 Rule 17 of CPC is hereby
allowed.**

**Plaintiffs are permitted to amend the plaint as
prayed in the application.**

**Plaintiffs shall carry out amendment and furnish
amended plaint within 14 days from the date of
order.**

*(Dictated to the stenographer, typed by her, corrected by me, and
then pronounced in open Court, on this the 25th day of June 2019).*

(GANAPATI GURUSIDDA BADAMI)

Senior Civil Judge Aland