

IN THE COURT OF SENIOR CIVIL JUDGE, VIRAJPET.

Present: Sri Lokesha M.G. B.A.L, LL.B
Senior Civil Judge, Virajpet.

O.S.NO.98/2014

Dated this the 07th day of January, 2023.

PLAINTIFF: Smt. Mayamma

(By Advocate Sri.C.S.J.)

Vs

DEFENDANTS: Sri. T. Somaiah & Others

(By Advocate Sri. C.S.M.)

ORDER ON IA.NO.VI

This application is filed by the Defendant No. 1 to 4, 7 and 8 U/O 6 R-17 of CPC to permit them to amend the written statement by way of insertion of para. It is stated in the accompanying affidavit that plaintiff is the elder sister of defendant No.1 and defendant No.3 is his younger sister. The suit is filed by the plaintiff for partition for seeking 1/6th share in the suit property. The plaintiff is one of the daughters of deceased Kuttappa. During the life time of parents, they had celebrated the marriage of plaintiff and defendant No.3 who is the sister of plaintiff as per the community and tradition in a befitting manner. During the marriage, valuable gold jeweleries equivalent to 400 grams of gold and silver items and

house hold materials and trousseau had been gifted to the daughters who accepted the same from their parents. The marriage was celebrated out of the agriculture income and it is equivalent to the amount of their share in the suit property. The plaintiff has not included the said gift items. It has to be included to adjudicate the lis comprehensively. Therefore, it is prayed to allow the application.

2. The plaintiff has filed objection stating that the application is filed after lapse of eight years of filing of suit. Written statement was filed on 14.11.2014. There is no whisper about the proposed amendment till then. The proposed amendment averments have no support of documents and bill of ornaments. It is also objected stating that the marriage of plaintiff was performed in a simple manner by her hard earned money. The marriage was performed 40 years ago. Therefore, it is still surprise about the gift given to the plaintiff. The imaginary relief is sought and it can not be given in the eye of law. The same is not raised till now. It is not sustainable. Therefore, it is prayed to dismiss the application.

3. Heard the arguments and perused the materials on record.

4. The following points that arise for my consideration are

1) Whether the applicants have made out the grounds to allow the proposed amendment?

2) What order?

5. My answer to the above points is as under:

Point No.1: In the **Negative**
Point No.2: As per final order for
the following

REASONS

6. **Point No.1:** The suit has been filed by the plaintiff for partition and separate possession of 1/6th share in the suit properties. She is the one of the daughters of Kuttappa. The defendant No.3 is also one of the daughters of Kuttappa. The plaintiff has shown A and B schedule property in the plaint and she has sought the declaration relief declaring that she has acquired A schedule property through her father. It is also stated that B schedule property is the ancestral property. The suit is of the year 2014. Written statement was also filed on 14.11.2014. Thereafter, the defendants have also got amended written statement. Then the defendants have not stated about the proposed amendment.

7. The proposed amendment is with regard to the celebration of marriage of plaintiff and defendant No.3 on 19.05.1978 and 06.06.1988 respectively. It is stated that their marriage was two days event as per Kodava Custom and it was

celebrated by their parents. They were provided golden ornaments equivalent to 400 grams, along with other household materials including costly sarees and lunch. The proposed amendment also includes about the expenses spent out of family income equivalent to the value of the share in the property. The gifts given to the plaintiff and defendant No.3 have to be included in the suit. Otherwise suit is liable to be dismissed for the said reason. As per the objection of the plaintiff, the application has been filed after 8 years of filing of written statement. At the time of pleading also, the defendants have not taken this defence and they have not whispered about gift given to the plaintiff or defendant No.3 including costly sarees, golden ornaments and household articles. Apart from this, the defendants have not produced any documents to support the same. No bill is produced to show the value of the golden ornaments and other things. Without sufficient documents, the said proposed amendment, can not be permitted to be allowed. The marriage of plaintiff, according to the defendants, was performed about 40 years ago. This is the material fact. It can not be believed about the said proposed amendment. It can not be known and expected from anybody about spending of amount or giving of gift 40 years ago during marriage. It also can be gathered that the male co-parceners were also given gift at the time of marriage and it can be clearly said that the amount was also being spent for their

marriage. If the same is considered as alleged in the application, definitely it would be violation of Article 14 of Constitution of India. Only on that basis, if share of the plaintiff is denied, it would be violation of Sec.6 of Amended Hindu Succession Act and clear disobedience of the judgment in Vineetha Sharma's case by the Hon'ble Supreme Court. But in this application, the averments stated are far away from the truth since they have no support of any documents. In the proposed amendment, it is also stated that during their marriage, sumptuous lunch and dinner with cocktail drinks were served to the guests for two days. It can not be averred like this. It appears that the defendants can not tolerate having of lunch by the guests or participants in the marriage. The defendants are also counting the amount spent for lunch and dinner. This conduct shows that to avoid giving of share to the plaintiff in ancestral property, they have come up with this application which is not maintainable. In the application itself, the defendants have referred the judgment of Hon'ble High Court of Karnataka in Hemalatha Vs. Venkatesh and others in W.P.No.39982/2022 dated 16.02.2022. It also appears that after passing of order in the said case, the defendants have come up with this application averments so as to suit the said judgment. But, the said judgment is not helpful to the defendants. Because, the facts and circumstances of the said case are totally different than that of

this case. In the cited case, application was filed to include two immovable properties on the ground that the defendant No.1 therein executed nominal sale deed in favour of father-in-law of plaintiff No.1 in that case which was given at the time of marriage of plaintiff No.1. Another immovable property was given to the plaintiff No.1 and her husband at the time of marriage and later sale deed was executed in favour of plaintiff No.1 and their husband. Hence, the said two immovable properties would be amenable for partition. The said properties were already received by the plaintiff No.1 therein at the time of her marriage as gift and hence, they have to be included in the suit. But in this case, there is no such circumstance. Hence, the defendants can not take advantage of cited case.

8. In support of arguments, the advocate for plaintiff has produced the ruling reported in 2019 (2) KCCR 125 (SC) in between Vijay Shah Vs. Gitaben Mukhi and others. He has also produced the judgments of Hon'ble High Court of Karnataka and High Court of Madras. It is held that when the trial of suit was almost over, then the application for amendment can not be maintained. It is also held that the applicant has to satisfy the proviso to Order 6 R 17 of CPC. If it is not shown, then the application is not maintainable. It is also held that if the proposed amendment application is filed at belated stage without any explanation, it is liable to be

rejected. Therefore, I am of the opinion that the rulings produced by the advocate for plaintiff are very much applicable to the case on hand to support his objection. Hence, I am of the opinion that the defendants have not made out grounds to consider the application. The objection of plaintiff is sustainable in view of the above. Therefore, the application is liable to be dismissed. Hence, I answer this point in the "**NEGATIVE**".

9. Point No.2: As per the above said discussion, I pass the following

ORDER

IA.No.VI filed by the defendants Under Order-VI Rule 17 of CPC is hereby dismissed with cost of Rs.500/-.

Sd/-xxx
(Loksha M.G)
Senior Civil Judge,
Virajpet.