

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC, AT
BANGARPET.**

PRESENT:- Sri. MARIYAPPA, BA. LL.B.,
Addl. Civil Judge & JMFC, Bangarpet.

Dated this the 17th day of February 2017

O.S. 200/2013

<u>Plaintiff</u>	<u>Defendant</u>
Smt. Sharadamma V/s Nanjundappa and others	
(By Sri. KM Adv.)	(By Sri. KVP Adv.)

IA No. III

Applicant/plaintiff :- Smt. Sharadamma
 V/s

Opponent/defendants :- Nanjundappa and others

ORDER ON IA No. III U/o 6 RULE 17 R/w Sec. 151 OF CPC

This is an interim application filed by the plaintiff and prayed for permit her to amend her plaint as sought for in the application.

2) In an annexed affidavit the plaintiff contended that, she brought the above suit against the defendants for the relief of partition and separate possession and other reliefs. After filing the written statement by the defendant No. 4, she enquired regarding joint family properties and she came to know that, other

properties of joint family are existing and same are not within her knowledge. Therefore she brought the instant application without any delay. The proposed amendment will not change the nature or character of the suit. If the application is allowed no hardship would be caused to the other side, on the other hand the plaintiff will be put to great hardship. On these grounds she prayed for allow her application.

3) On the other hand the 4th defendant resisted the application of the plaintiff by denying affidavit averments and further contended that, during cross examination of PW-1, she has given evidence about her ignorance about the existence of properties and moreover the schedule property is only liable for partition according to her evidence. Now the plaintiff by colluding with the defendant No. 1 to 3 brought the instant application. The 4th defendant is purchaser of the suit schedule property and suit filed against only property purchased by the 4th defendant. Now the plaintiff in order to patch up her evidence has come with the application. If the proposed amendment is allowed, the nature of the suit will change and the right accrued by the 4th defendant will taken away for no fault on him. Since the evidence already recorded and case is posted for further

evidence of plaintiff. At this stage the application is not maintainable. On these grounds he prayed for reject the application of the plaintiff.

4) Heard the arguments of both side.

5) The point that arises for consideration is ;

1. Whether the proposed amendment is necessary to determine the real controversy between the parties ?

6) My findings to the above point is in affirmative for the following;

REASONS

7) The plaintiff brought the suit for the relief of partition and separate possession. On the other hand the 4th defendant resisted the suit of the plaintiff by filing his written statement. After framing of the issues the plaintiff examined as PW-1 and she has been cross examined by other side. When the case is set down for further evidence of plaintiff, at this stage the plaintiff brought the instant application for seeking amendment of her plaint to include the 6 item properties in schedule as item No. 2 to 7 of suit schedule properties. In her affidavit she contended that, she has no knowledge about existence of remaining joint family

properties. But she awared about the same after filing of the written statement of 4th defendant and filed the instant application to include the proposed properties in the plaint schedule. On the other hand the defendant contended that, during her cross examination the plaintiff deposed her ignorance about the existence of the properties. Moreover the schedule property is only liable for partition. Therefore the proposed amendment will be taken away the valuable right accrued to the 4th defendant.

8) Since the suit is for the relief of partition in the same all the properties of the joint family have to be included. In the present suit the plaintiff wants to include the proposed properties by contending that, which are the joint family properties. The burden is on the plaintiff to prove that, the proposed properties are joint family properties and in the said properties she is having her share. In the present suit since the evidence of the plaintiff side is not completed and the proposed amendment is in respect of include the properties. If the application is allowed the nature of the suit will not change. The defendant is also having his right to take valuable defence in respect of proposed properties. It is pertinent to note here that, one of the object of the provision U/o 6 rule 17 of CPC is to avoid multiplicity of proceedings.

Therefore the application of the plaintiff is deserves to be allowed. No doubt there is a delay in filing of instant application it will cause some hardship to the defendant. But it may compensate by imposing costs. As a result I proceed to pass the following;

ORDER

IA No. III U/o 6 rule 17 R/w Sec. 151
of CPC filed by the plaintiff is hereby
allowed on cost of Rs. 100/-.

The plaintiff is hereby permitted to
amend her plaint as sought for.

(Dictated to the stenographer transcribed by her, corrected by me and then
pronounced in the open court on this the 17th day of February 2017.)

(MARIYAPPA)
Addl. C.J. & JMFC., Bangarpet.