

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
MULBAGAL**

Dated this the 16th day of March 2021

Present:

Sri. HAJIHUSENSAB YADAWAD B.Com, LL.B,
Prl.Civil Judge & JMFC,
Mulbagal.

O.S. No. 50/2017

Plaintiffs: Sri. K.V.Gopinath & others

V/s

Defendants: Sri. Venkateshappa & others

Parties to I.A.No.VII

Applicants: Sri. K.V. Gopinath & others
Plaintiffs

(By **Sri P.M.S**, Adv)

V/s

Opponents: Sri. Venkateshappa & others,
Defendants

(Defendant Nos.1, 3 & 4 by **Sri. N.S** Adv)

(Defendant No.2 by **Sri. K.R.R** Adv)

(Defendant No.5 by **Sri. P.R** Adv)

(Defendant No.6 **Exparte**)

ORDER ON I.A.No.VII FILED U/O 6 RULE 17 R/w

Sec.151 of CPC

The counsel for Plaintiffs filed IA No.7 U/O 6 Rule 17
R/w Sec.151 of CPC to add one more property as suit

schedule item No.8 i.e., the old house and vacant site property situated at Kammadatti Village, Avani Hobli, Mulbagal Taluk.

2. The said application is accompanied with an affidavit of Plaintiff No.1 wherein he contended that recently they have collected documents then they realized about amendment of schedule with regard to adding of one more property which is also joint family property. They are having legitimate share over the suit schedule properties and thereby prayed to allow the application.

3. On the contrary, the counsel for Defendant No.1, 3 and 4 has filed objections and contended that the application is not maintainable either in law or on facts. Further, it is contended that the mother of Plaintiff's already had filed RA No.150/2013 challenging the Judgement and Decree passed by this Court in OS No.192/2010. In RA No.150/2013 she filed IA No.3 Under Order 41 Rule 27 to include the present proposed suit schedule property. But, the said IA was dismissed by the Hon'ble Appellate Court. After the disposal of RA the mother of Plaintiffs preferred RSA No.1029/2016 which also came to be dismissed. Therefore, resjudicata is

applicable to the Plaintiffs, thereby prayed to dismiss the application.

4. Heard both sides on IA No.7. Perused records.

5. The points for consideration of this Court are as follows;

1. Whether the Plaintiffs/Applicants have made out sufficient grounds to allow the application?

2. What order?

6. My Findings to the above points are here under:

Point No.1 : In the **Negative**.

Point No.2 : As per the final order for the following;

REASONS

7. POINT NO.1 :- This is a suit filed by the Plaintiffs for the relief of partition. Now, the Plaintiffs are intending to add one more property as suit schedule item No.8 property i.e., old house and vacant site property situated at Kammadatti Village of Mulbagal Taluk. In support of this contention, the Plaintiffs have not produced any kind of property extract to show the existence of said property. On the contrary, the Defendant Nos.1, 3 and 4 contended about earlier OS No.192/2010, RA No.150/2013 and RSA No.1029/2016. In support of their contention, they have produced the xerox copies of

Judgements and Decrees of the same. On perusal of same it is noted that one Hiriyaamma W/o Ramappa has filed OS No.192/2010 with respect to present suit schedule properties which was decreed in part. Thereafter, the mother of Plaintiffs by name Sumangalamma preferred RA No.150/2013 which was came to be dismissed. Again she preferred RSA No.1029/2016 before the Hon'ble High Court of Karnataka, Bengaluru which also came to be dismissed. But, the counsel for Defendant Nos.1, 3 and 4 has not produced the order passed on IA No.3 in RA No.150/2013. However, as the present suit is for the relief of Partition, all the joint family properties should be brought before the Court for effective partition. But, on perusal of records, the Plaintiffs have not produced any document to show the existence of proposed suit schedule property and further have not produced old records to show that the said property is their joint family property. Therefore, in the absence of concerned records it would not be proper to allow the amendment application. Therefore, the application suffers as devoid of merits. Therefore, the Plaintiffs have not made out sufficient grounds

to allow the application. Therefore, the application is deserve to be dismissed. Hence I answer point No.1 in the **Negative.**

8. Point No.2 :- Having discussed in detail, this Court pass the following :

ORDER

**The I.A.No.VII filed by Plaintiffs/Applicants
U/O 6 Rule 17 R/W Sec.151 of CPC is hereby
dismissed.**

No order as to costs.

(Dictated to the Steno on computer, typed by him, revised, corrected and then pronounced by me in open Court, on this 16th day of March, 2021)

**(HAJIHUSENSAB YADAWAD)
Prl. Civil Judge & JMFC.,
Mulbagal.**