

KAKL410012652016



IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C., MULBAGAL

Present: **Sri. GOWDA JAGADEESHA RUDRE.**

*B.Com., L.L.B.*

Senior Civil Judge and JMFC., Mulbagal.

DATED ON THE 23<sup>rd</sup> DAY OF SEPTEMBER-2024

O.S. No.270/2016

1.Smt. Chinnakka & 2 Others .....PLAINTIFFS.

V/S

1. Sri. S. Reddappa & 4 Others ....DEFENDANTS.

PARTIES IN I.A. No.6.

APPLICANT/  
PLIANITFF No.3

1 Sri. Subramani.B.A  
S/o Late Akkalappa,  
Aged about 31 years,  
Agriculturist,  
R/at: Bevahalli Village,  
Kasaba Hobli,  
Mulbagal Taluk.

**Sri. K.R.R,** Advocate for plaintiffs

V/s

OPPONENTS/  
DEFENDANT No.1  
to 3.

1 Sri. S.Reddappa & 2 Others

**Sri. K.V.S.,** Advocate for  
Defendant No.1 to 3

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|                                                                     |   |                                                                                                                                                  |
|---------------------------------------------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Provision under which application is filed                          | : | Under Section 151 of CPC.                                                                                                                        |
| Relief sought for                                                   | : | Seeking leave of the Court to subscribe the signature of Plaintiff No.2 and thumb impression of Plaintiff No.1 on the Plaint and Vakatalathnama. |
| The date on which application is filed by the Plaintiff No.3        | : | 14.08.2018                                                                                                                                       |
| The date on which the objection is filed by the Defendant No.1 to 3 | : | 05.09.2018                                                                                                                                       |
| The date on which the orders passed on the said application         | : | 23.09.2024                                                                                                                                       |

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**ORDERS ON I.A.No.06**

The Plaintiff No.3 has filed this application under Section 151 of CPC seeking leave of the Court to subscribe the signature of Plaintiff No.2 and Thumb Impression of Plaintiff No.1 on the Plaint and Vakatalathnama.

2. The Plaintiff No.3 has sworn an affidavit wherein he stated that suit is filed by him along with Plaintiff No.1 and 2 against the Defendants seeking the relief of Partition and Separate Possession. At the time of filing of the suit, inadvertently the signature of the Plaintiff No.2 and thumb impression of Plaintiff No.1 has not been obtained on the Plaint and Vakalathnama. The said mistake was bonafied one but, not intentional one. The said fact came to his knowledge recently. If permission is accorded to subscribe the signature and thumb impression

of Plaintiff No.1 and 2 on the Complaint and Vakalatnama no prejudice will be caused to other side. On the other hand, if application is rejected he will be put to greater hardship and injustice will be caused to them. **With these averments, the Plaintiff No.3 sought to allow the application.**

3. The Defendant No.1 to 3 filed their objection indicating therein that affidavit sworn by the Plaintiff No.3 are false, frivolous and vexatious in nature. It is contended that, as per under Order 6 Rule 14 of CPC every Complaint should be signed by the party and his pleader if any. It is mandatory provision that all the Plaintiffs to the suit subscribe their signatures/LTMs on all the pages of the Complaint. The Plaintiffs have not complied the mandatory provision. Therefore, said material defect cannot be cured as it relates back to the date of filing of the suit. **With grounds, the Defendant No.1 to 3 sought for rejection of the application.**

4. Heard both sides and perused the materials on record.

5. Based upon the above said respective contentions the following points arose for consideration of the Court.

**Point No.1:-** Whether the Plaintiff No.3 made out sufficient grounds to permit the Plaintiff No.1 and 2 to subscribe their respective signature and thumb impression on Complaint and Vakalatnama at this stage of the suit?

**Point No.2:** What order?

6. After hearing both parties and on perusal of the records, the Court proceeds to answer aforesaid point as under:-

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

Point No.2: As per final Order for the following:

**:R E A S O N S:**

7. **Point No.1:-** The present suit is filed by the Plaintiffs against the Defendants seeking the relief of Partition and Separate Possession of the suit 'A' to 'C' schedule properties by partition by meets and bounds. The declaration to the effect that sale deed dated 26.11.2009 and 28.03.2016 are not binding on the Plaintiffs is also sought. It is averred that Plaintiffs and Defendant No.1 to 3 hail from common ancestor Changappa and the suit schedule properties are their ancestral and Joint Family properties. No partition of any kind has been taken place in respect of suit properties. When the Plaintiffs demanded their legitimate share with Defendant No.1 to 3 they refused to allot the same. Hence, they constrained to file the suit.

8. The Court has perused the Complaint and Vakalatnam filed on behalf of plaintiffs while institution of the suit. On perusal, it is quite clear that it is only the signature of Plaintiff No.3 find place in the Complaint, verification clause, connected Affidavit and Vakalatnama. No signature or Thumb impression mark of plaintiff No.1 and 2 find the place in the Complaint, Verification clause, connected Affidavit and Vakalatnama. According to Plaintiff No.3 by mistake the signature and Thumb Impression mark of Plaintiff No.1 and 2 have not been affixed. The objection raised by Defendant No.1 to 3 is that as per the Order 6 Rule 14 of CPC all the Plaintiffs have to subscribe their signature/Thumb Impression on the Complaint and Vakalathanama while the filing of the suit.

The Defendant No.1 to 3 are correct in their submission as Order 6 Rule 14 of CPC states so.

9. It is noted that, this mistake came to the knowledge of the Plaintiff No.3 when he was cross examined by the Defendant No.1 to 3. Same is evident from the cross examination of PW.1 conducted on 10.07.2018. The Defendant No.1 to 3 posed question to the effect that since the Plaintiff No.1 to 3 do not constitute Joint Hindu Family thus, they have not subscribed signature/LTM. However, witness denied the suggestion as false. Now, the question is whether the Court at this stage can permit the Plaintiff No.1 and 2 to subscribe their signature/LTM on Plaint and Vakalathnama. In catena of decision the Hon'ble Apex Court observed as follows: *"Rules of Procedure are not by themselves an end but means to achieve the ends of justice. Rules of Procedure are tools forged to achieve justice and are not hurdles to obstruct pathway to justice construction of Rules of procedure which promotes justice and prevents miscarriage by enabling the Court to do justice in Myriad situations all of which can not be envisaged acting within the limits of permissible construction must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and essentials of prescribed procedure have been followed there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. This is pragmatic approach which needs to be adapted while construing a purely procedural provision otherwise*

*Rules of Procedure will become the mistress instead of remaining handmaid of justice contrary to the role to it in our legal system".*

10. The research on this topic led me to a decision of the Hon'ble High Court in the matter of **MAKTAMBI v. SHANTABAI** reported in 1964 Suppt. Mysore Law Journal 302. The following are few excerpts from the said decision reproduced for better appreciation of the case.

"Rule 14 of Order VI of the CPC., requires a pleading to be signed by the party and his pleader, if any, unless the party is by reason of absence or for other good cause, unable to sign the pleading, in which event it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. Rule 15 similarly requires every pleading to be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Rule 2 of Order III provides for appearances applications and acts in a suit by recognized agents of parties."

"It is clear that even if it can be said that the signature to a plaint or its verification to part of the plaint, the omission on the part of a person to sign the plaint or verify it is a mere defect or irregularity not affecting the merits of the case or the jurisdiction of the Court and Section 99 of CPC forbids the reversal or substantial variation of any decree or remand of the proceedings, on account of any misjoinder of parties or causes of action or any error OF defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. The contention urged on behalf of the defendant is not that the omission to sign or verify the plaint is nothing more than a defect or irregularity and it cannot be disputed that if a person' has forgotten to sign and verify his plaint, he can be allowed to make good the defect at subsequent stage."

"It is also equally well settled that if a plaint is not signed or verified? the plaintiff could be permitted by the Court in the exercise of its discretion to affix his signature and verify it at a subsequent date.

Code of Civil Procedure does not define a plaint. Section 26 of CPC. reads:

"Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed."

"Order VI Rule 1 of the Code says that 'pleading' shall mean plaint or written statement. Rule 2 enumerates the contents of a pleading. Rules 3 and 4 prescribe the forms of pleadings and the particulars to be given in certain cases. Rule 14 requires the pleading to be signed and Rule 15 requires its verification.

Rule 17 authorises the amendment of pleading in suitable cases with the permission of the Court. Likewise Order VII Rule 1 enumerates the particulars to be contained in a plaint. That the plaint presented by the plaintiff in this case ail the particulars required by Rule 2 of Order VI and Rule 1 of Order VII were contained is undisputed. If therefore the plaint conformed to the requirements of Rule 2 of Order VI and Rule 1 of Order VII, but the plaintiff did not affix his signature to it as required by Rule 14 of Order VI and she did not verify the plaint as required by Rule 15 of Order VI can it be said whatever produced by the plaintiff...was not a pleading or plaint but was a piece of waste 'paper'.

"It seems to me that the Rule 14 of Order VI says that every pleading shall be signed and Rule 15 says that every pleading shall be verified makes it abundantly clear that what makes a document produced by the plaintiff before a Court a pleading is not his signature or verification to it, but the fact that the particulars required by Rule 2 of Order VI and Rule 1 of Order VII of the C.P.C. are contained in it. The requirement intended to bestow upon the pleading a prima facie guarantee of the truth or the correctness of the allegations contained in it is the correctness of the allegations contained in it is the statutory requirement of Rule 14 that the plaintiff should sign the plaint and further requirement of Rule 15 that he should verify it. In my opinion a plaint by reason of its conforming to the requirements of Rule 1 of Order VII and Rule 2 of Order VI does not cease to be a plaint merely for the reason that further requirement of CPC that it should be signed and verified was not complied with."

11. From the above observation of the Hon'ble High Court of Karnataka it is now clear that the Court can exercising its discretionary power can permit the parties to subscribe their signature on pleading if same is not made while filing before the Court. However, it is noted that the suit was filed way back in the year 2016. Instead of permitting the plaintiff No.2 to subscribe signature on original Plaint and Vakalathnama if he is permitted to file fresh Plaint and Vakalathnama no prejudice will

be caused to the Defendants. The Court is of the opinion that, the mistake might have caused by oversight and same is not intentional one. These kinds of mistake happens rarely and same is not unknown to the legal proceedings. Error is basic human feature that, every individual bound to commit despite due diligence.

**12.** During pendency of this application, the Plaintiff No.1 is passed away leaving behind existing Plaintiff No.2 and 3 as her Lrs. The amendment was carried out to the said effect and amended plaint already came to filed. So, now it is the Plaintiff No.2 who is happened to be the full blood brother of Plaintiff No.3 is to be given permission to subscribe the signature on Plaint, affidavit and Vakalathnama. If the existing Plaintiffs are permitted to file fresh Plaint, verification, Affidavit and Vakalathnama no prejudice will be caused to the defendants. Therefore, this Court is of the opinion that reasonable cost imposed should to imposed upon the Plaintiffs for causing inconvenience at this stage of the suit. Undersuch circumstances, Court answers **Point No.1** in the **Affirmative**.

**13. Point No.2:-** In view of the discussions made above, this Court proceeds to pass the following:

### **ORDER**

I.A.No.6 filed by the Plaintiff No.3 is allowed  
on cost of Rs.1,000/- on following terms:-

The Plaintiff No.2 and 3 are directed to file  
fresh Plant, connected Affidavit and  
Vakalathnama by subscribing their signatures as



contemplated under Order 6 Rule 14 and 15 of  
CPC.

Cost is condition precedent.

*(Order dictated to the stenographer and computerized by him, corrected and then pronounced by me in the Open Court on this the 23<sup>rd</sup> day of September – 2024.)*

**(Gowda Jagadeesha Rudre)**  
Senior Civil Judge & JMFC,  
Mulbagal.