

**IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,
MADDUR****Present: Smt. Nalina S.C., B.A.,LL.B.
Addl. Civil Judge & JMFC,
Maddur****Dated: This the 21st day of March 2024****O.S. No:227/2015****Plaintiff :** Smt.K.V.Pavithra

(By Sri.MNM., Advocate.)

V/s

Defendants: Sri.Venkategowda
Since dead by L.Rs and others.(D1 by Sri.APR., Advocate,
D2(A) by Sri.PH., Advocate,
D3 & D4 by Sri.SMS., Advocate,
D5 & D6 by Sri.KS., Advocate,
D7 : Exparte.)**IA No.IX****Applicants:** Sri.C.Venkatesh & others
(defendants No.3 to 6)

V/s

Opponens: Smt.K.V.Pavithra**ORDERS ON IA NO.IX FILED BY THE DEFENDANT U/o 6
RULE 17 R/W/S 151 OF CPC**

The applicants/defendants have filed application under Order 6 Rule 17 R/w/s 151 of CPC, with a prayer to permit the defendants to amend the

written statement by impleading proposed properties as suit schedule properties.

2. In the accompanying affidavit to IA No.IX the defendant sworn that, the plaintiff has filed this suit against the defendants for seeking the relief of partition and separate possession with respect to suit schedule properties. Now the present case is pending for trial. Due to lack of knowledge the defendant did not implead the proposed properties in the written statement and said fact came to at the time of cross examination of PW1. In the proposed amendment the defendant impleaded the property which are the joint family properties of plaintiff and defendants and which is necessary for adjudication. Hence prays to allow the application.

Amendment sought for:-

In the written statement the following para to be added as para 10(a) and 10(b) :

10(a) Without prejudice to the contention raised above it is submitted that the defendants No.1 and 2 sold the suit Item No.1 and 2 in favour of C.Venkatesh through a registered sale deed dated:02.06.2005 for their legal necessity and benefit of the joint family. Out of the sale proceeds of suit Item No.1 and 2, the defendant No.1 and 2 have constructed a residential house in property No.472/486 of Kesthur village and dwelling therein. Infact this property is the ancestral

to the 1st defendant, after dismantling the old structure defendants No.1 and 2 have constructed a new house. But unfortunately the house constructed by the defendants No.1 and 2 not included to the present suit. Moreover apart from the utilization of funds for construction of house the 1st defendant for the purpose of marriage of the plaintiff. As such sale made by defendant No.1 and 2 is for legal necessity and benefit of the joint family of defendant No.1 and 2. Moreover the 1st defendant being the manager of joint family had every right to alienate the joint family properties for the purpose of legal necessity. As such the alienation made by the defendants No.1 and 2 is binding on the plaintiff.

It is submitted that the father of the defendant had a commercial site property by the side of Tumkur-Maddur Road bearing No.326/A3 measuring 20 X 15 feet. This is very valuable property and valued more than Rs.5,00,000/- and the house constructed by them is valued more than Rs.5,00,000/-. But the commercial site measuring 20X15 feet also not included to the present suit with a mala fide intention.

Apart from the above properties the 1st defendant had one more landed properties, that property is also not included to the suit. As such the suit is bad for non-inclusion of all the family properties. In spite of it, the plaintiff chosen to file suit only against the purchasers and the properties sold without including other family properties. On this score alone the suit of the plaintiff is liable to be dismissed.

10(b) That the 3rd defendant purchased suit Item No.1 and 2 through a registered sale deed dated:02.06.2005, but the plaintiff had the knowledge of alienation made by defendant No.1 and 2 in the year 2005 itself. As such the plaintiff ought to have filed suit within three years from the date of alienation. As such the suit of the plaintiff is barred by law of limitation."

3. The counsel for plaintiff filed objection to the said application and contended that the proposed property documents were not available to us to Implead and it is not required to implead by the defendant, the plaintiff herself implead the said property. The application filed after commencement trail to drag o the proceeding Hence, sought for dismiss the application.

4. Heard the arguments by both sides.

5. Now the following Points would arise for consideration of this Court.

POINTS

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

2. What Order ?

6. My findings to the above Points are as follows:

POINT NO.1 : In the Affirmative

POINT NO.2 : As per final order
For the following:

REASONS

7. **POINT NO.1:-** The plaintiff filed present suit for the relief of the partition and separate possession over the suit schedule property.

8. The matter pending trial. In the mean while the defendant has filed present application as well as affidavit and sought for impleading proposed properties by way of amendment.

9. In order to find out whether the Application of the defendant under Order VI Rule 17 for amendment of witness is bonafide and sustainable at this stage or not, it is useful to refer to the relevant provisions of CPC. Order VI Rule 17 reads thus:

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be

just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. *The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The principles that guide the exercise of discretion in allowing the amendment are that, multiplicity of proceedings should be avoided. That amendments which do not totally alter the character of action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not*

inflicted upon the opposite party under pretense of amendment.

10. In the present case on hand the matter pending for the cross examination of plaintiff i.e., after commencement of the trial. As such the defendant has to show the due diligence for filing this application. On perusal of the reason mentioned in the affidavit clearly show that due lack of document he has not stated earlier. The said fact does not denied by the plaintiff. Hence, considering that, the defendant prove the due diligence to file this application.

11. In the suit for partition inclusion of the all the ancestral and joint family property is mandatory. Whether said properties are ancestral and joint family properties or not will be decide after full pledge trial. As such it is just and necessary for the purpose of determining the real questions in controversy between the parties. Herein also without implead the proposed properties in the plaint, court can not determining the real controversy between the parties. In the present application

if the proposed amendment allow, the nature of the suit does not change and the plaintiff has not put in to any hardship. If the defendant is permitted go on with the further pleading, the suit will be ended in a single trial, failing which, there will be scope for multiplicity of proceedings. Therefore, at this stage, the defendant/applicant has made out the ground that, the proposed amendment is necessary to determine the real controversy between the parties. In the decision of **2021(2) KCCR1293 between Sri. Kalegowda vs sri. Marigowda and others** the Hon'ble Lordship held that "**while considering the application, the trial court can not go into the merit of the case**".

12. Hence, it appears that, the defendant filed this application with due diligent. On considering all these points the application is required to be allowed. Accordingly, the Points under consideration are answered in the Affirmative.

13. **POINT NO.3:** - In view of the above discussion and answering the above Points, I proceed to pass the following:

ORDER

I.A. No.IX filed by the
defendants under Order VI Rule
17 of C.P.C. is hereby allowed with
cost of Rs.500/-.

(Dictated to Stenographer, corrected and then pronounced in the
open court on this the 21st day of March 2024)

(Nalina S.C.)
I Addl. Civil Judge and JMFC,
Maddur.