

**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND
JMFC, MALAVALLI**

Present

*Sri. Sachinkumar Shivapuji. BA,L LLB.,
I Addl.Civil Judge and JMFC.,
Malavalli*

Dated this the 10th day of February, 2023

FDP No.15/2013

Petitioner: Neha

V/s

Respondents: H.M. Kumar and others

I.A. No.VI and VII

Applicant : Neha

V/s

Opponent : H.M. Kumar and others

**Common Order on I.A.No.VI U/O.6 Rule 17 R/w
sec.151 Of C.P.C. and I.A. No.VII Under sec.151 Of
C.P.C.**

The petitioner has filed I.A.No.VI U/O.6 Rule 17 R/w Sec.151 Of C.P.C. and I.A. No.VII Under Sec.151 Of C.P.C. prays to amend the petition schedule properties and also prays to modified

share of the petitioner and respondent No.1,2 and 4.

2. For the perusal of applications in support of affidavit which reveals petitioner has filed this against the respondents for final decree proceeding. Further petitioner come with the present applications stating that she has obtaining decree in O.S.No.147/2007 against the respondent based on the decree she filed this petition. Further, at the time of filing of petition there is a typographical mistake arose in the schedule properties. Therefore, it is necessary to correct the schedule properties. Further stated respondent No.1 was died on 26.04.2012 leaving behind petitioner and respondents as legal heirs. Therefore, it is necessary to modified the share of

the petitioner. Hence petitioner prays to allow the applications.

3. Copy of the applications duly served, respondent counsel filed objection to I.A.No.VI stating that application filed by the petitioner is not maintainable either under law on or facts. The petitioner come with the present petition by suppressing judgment and decree. Therefore, the application filed by the petitioners is not maintainable. Hence they prays to dismiss the application.

4. Heard the argument by both petitioner and respondents counsels and considering the pleadings of the points arise for consideration.

POINTS

1. Whether IA No.VI under Order 6 Rule 17 R/w Sec. 151 of C.P.C. filed by the petitioner is deserve to allow or not?

2. Whether IA No.VII under under Sec. 151 of C.P.C. filed by the petitioner is deserve to allow or not?

3. What is order?

5. My findings on the above points are as under;

Point No. 1 : In the Affirmative,

Point No. 2 : In the Negative,

Point No. 3 : As per order as follow,

-: REASONS :-

6. Point No.1 and 2: This points are interlinked with each other. Hence they are taken up together for common discussion to avoid the repetition of facts.

7. This petition filed by the petitioner for the final decree proceeding as per the judgment and decree in O.S.No.147/2007 which was came to be decreed on 06.02.2012. Further petitioner stated that there was a typographical mistake schedule properties

have been wrongly mentioned. Therefore, it is necessary to modified as per the suit schedule of O.S.No.147/2007. Further stated on 26.04.2012 the respondent No.3 was died leaving behind petitioner and other respondent. Therefore, the share of respondent No.3 is to be divided in favour of petitioner and other respondents and rectification of share of the petitioner and respondent No.1, 2 and 4 is necessary. In the present case on hand the amendment of the petition schedule is amend it will not cause to the other side. Moreover, the share of the parties have been divided in this final decree proceeding as per the schedule of the original suit . Therefore, the petitioner is entitled for the amendment of the petition as per the schedule of original suit. Further, the petitioner prays to modified the share

of petitioner and other respondents due to death respondent No.3 who is the father of respondent No.1. Further the share is to be modified only after proper enquiry with regard to the entitlement of share of the petitioner in respect of respondent No.3 share. Moreover the share of respondent No.3 is to be divided among the petitioner and other respondents. Therefore, the proper enquiry is necessary in the present on hand without the enquiry this court cannot modified share of the parties. Therefore, it is fit case to adjourned for the enquiry with regard to the modification of share. Hence, the application for rectification of share is concern is not maintainable it requires enquiry. Therefore, taking into the consideration of the reasons Point No.1 answer in Affirmation and Point No.2 answered in Negative.

8. Point No.3:- For the reason discussed supra, I proceed to follow;

:- ORDER :-

I.A.No.VI U/O.6 rule 17 R/w Sec. 151 of CPC. Filed by the petitioner is hereby allowed.

I.A.No.VII under Sec. 151 of CPC. Filed by the petitioner is hereby dismissed.

Petitioner is directed to carried out amendment and filed amended petition.

Call on for enquiry by: 22.05.2023

(Dictated to the Stenographer, directly on computer, revised and corrected by me then pronounced in the open Court, this the **10th day of February, 2023**)

*Sri. Sachinkumar Shivapuji.
I Addl.Civil Judge and JMFC.,
Malavalli.*