

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

DATED ON THIS THE 4th day of March 2023

:PRESENT:

Smt. Padma M, B.A., L.L.B.,
Addl. Civil Judge & J.M.F.C.,
Pandavapura

ORIGINAL SUIT NO.38 / 2012

Plaintiff : Javaregowda

v/s

Defendants : Jagadish and others

I.A.No.VII

Applicant : Javaregowda ... plaintiff

(By Sri. BKP, Adv.,)

v/s

Opponents : Jagadish and others

---- defendants

(NMG, Adv., for D-1, Sri. MSP, Adv., for D-5 and D-2 to 4 placed exparte)

ORDER 6 RULE 17 OF C.P.C

1. Learned Counsel for plaintiff has filed IA No. VII U/O VI Rule 17 R/W/S 151 of CPC for implead the additional properties as a item No.4 & 5.

2. In support of his application, the plaintiff has filed a affidavit and stated that the plaintiff has filed a suit for partition & separate possession over the suit schedule property. The defendant has filed a written statement also during the cross-examination of Pw1, the learned counsel of defendant suggested that some ancestral and joint family properties of the plaintiff and defendants not inserted the plaint. Therefore, the plaintiff has enquire the documents by that he found that proposed item No.4 & 5 properties are ancestral and joint family properties of the plaintiff and defendants family. The plaintiff has know the about said properties, hence he has not insert the plaint at the time of filing of the suit. Presently, the plaintiff got all the documents with regarding the proposed implead additional properties . The plaintiff is entitled share over the said properties, therefore said properties are implead the plaint is very much necessary. If the application is allowed, it will not cause to the other side and also not change the cause of action of the plaint, hence, prayed to allow the application.

3. On the other hand, defendant No.5 filed objections and stated that, the plaintiff filed this application is not maintainable either in law or on facts. The plaintiff has filed after lapse of 11 years this application. The defendants are taken contention at the time of filing of the written statement, but the plaintiff has filed this false affidavit, therefore plaintiff has not made out a ground, hence dismiss the application.,

4. On consideration of contentions of both the parties, the following

points arise for consideration of this court:

- 1. *Whether the plaintiff has made out grounds to allow the application ?***
- 2. *What order?***

5. The above points are answered as under:

Point No.1 : Affirmative

Point No.2 : As per final order

for the following:

REASONS

6. Point No.1: On perusal of the records, it shows that, the plaintiff has filed a suit against the defendants for seeking relief of partition & separate possession of the suit schedule property. By oversight, the plaintiff has not know about the additional properties item No.4 & 5. During the cross-examination, the defendants suggested the Pw1 by that time the plaintiff has enquired the documents when the plaintiff know about the proposed additional properties details, said properties are ancestral properties of the plaintiff and defendants. Hence The plaintiff is entitled share over the said properties. If said properties are not included it will be cause to the plaintiff case. On the other hand, the defendants taken contention that, after lapse of 11 years, the plaintiff has filed this application for drag on the proceedings, hence dismiss the application.

7. I have gone through the materials, it shows that, the suit for partition & separate possession to insert all the ancestral and joint family properties if the said application is not allowed, it will be create multiplicity of proceedings. It is clearly shows that, the plaintiff has filed a suit in the year of 2012. Now the plaintiff has filed this IA for implead the additional properties. Delay it will be compensated on cost. If the application will not allowed, it will create multiplicity of proceedings. Hence, I rely on the decision of The Hon'ble Supreme Court of India in **AIR 2006 SC 1647, (2006) 4 SCC 385** has setup guidelines for entertaining application for amendment and explained the object of order 6 rule 17 of CPC that, the court should hold an enquiry and try the suit/case on merits and consequently should allow all the amendments that may be necessary for determining the real question in controversy between the parties. But it does not cause injustice or prejudice to the other side, the rule of amendment is indeed a rule of justice, enquiry and good conscience. The power of granting amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court. Therefore, in the interest of justice and disposal of case on merits, I am of the opinion that the amendment application is deserves to be allowed. Further admittedly, there is a delay in filing the application by the plaintiff. Hence, this court opines that it is necessary to make an order requiring him to pay to the other parties such cost as would be reasonably sufficient to reimburse in respect of expenses incurred by them in attending the court on the earlier dates. Hence, it is necessary to impose suitable cost for causing delay in filing the

application. Accordingly, **Accordingly, I answer above point No.1 in the Affirmative.**

9. POINT NO.2: In view of the above discussions, I proceed to pass the following.

ORDER

IA No. VII filed by the plaintiff is filed U/O VI Rule 17 r/w sec.151 of CPC, is hereby allowed on cost of Rs.1,000/-.

Plaintiff shall carry out the amendment and furnish amended plaint within 5 days.

(Dictated to the Stenographer directly on to the computer, typed by him, corrected by me and then pronounced on this the 4th day of March 2023)

Smt.PADMA M,
II Addl. Civil Judge & JMFC
Pandavapura

*Orders pronounced in the open court vide
separate orders*

ORDER

***IA No. VII filed by the plaintiff is filed U/O
VI Rule 17 r/w sec.151 of CPC, is hereby
allowed on cost of Rs.1,000/-.***

***Plaintiff shall carry out the amendment
and furnish amended plaint within 5 days.***

Call on

**II Addl. Civil Judge & JMFC
Pandavapura**