

**IN THE COURT OF PRL. CIVIL JUDGE & JMFC AT
SRIRANGAPATNA**

DATED THIS THE 19th DAY OF June 2020

O. S. No. 304/2009

Plaintiff : Smt. Sannamma

V/s

Defendants :Parasiddegowda and others.

Applicant : Smt. Chandramma (Def. No. 4)

**ORDERS ON IA No. VII FILED U/O 23 RULE 1(A)
OF CPC AND IA NO. VIII FILED U/O 6 RULE 17
R/W/S 151 OF CPC**

The applicant / defendant No. 4 has filed the above application U/O 23 Rule 1(a) of CPC seeking permission to transpose herself as 2nd plaintiff from defendant No. 4. In the affidavit stated that the plaintiff and the defendants have constituted an Hindu Undivided Joint family. The 4th defendant has not appeared through counsel and filed vakalath to conduct the case. During the pendency of this suit the 1st defendant is the father of the plaintiff along with other defendant agreed to compromise the dispute between themselves. In this compromise the 1st defendant agreed to give 30 guntas of property as gift. But by playing fraud on 27-09-2014 the 1st defendant along with brothers of this applicant they have created

a relinquishment deed instead gift deed to deprive the rights of this applicant. Therefore, the applicant/4th defendant is seeking permission to transposition as plaintiff No. 2 from the position of 4th defendant.

2. Further, the plaintiff has filed IA No. VIII U/O 6 Rule 17 of CPC seeking for amendment of the plaint to insert additional pleading after para No. 6 as 6(a) and 6(b). She has also produced a copy of relinquishment deed 22-09-2014. In the affidavit the plaintiff stated that during pendency of this suit the father and brothers of the plaintiff approached her and the defendant NO. 4 and 6 to settle the matter and agreed to give 30 guntas of the property as gift. But playing fraud they took signatures on the relinquishment deed instead of execution of gift deed. The said facts have been arose during pendency of the suit. The subsequent facts have to be implead in the suit in order to prove the case. Hence, prays to allow the application.

3. The defendants have not filed any objections to the above application. But, counsel for the defendant filed memo stating that the plaintiff Smt. Sannamma and the 2nd defendant have settle the matter and she executed a release deed on 22-09-2014. Hence, prays to dismiss the suit.

4. Heard on application.

5. The Points that arise for my consideration are here under :-

1. Whether the application filed by the applicant/defendant No. 4 under order 23 Rule 1(A) r/w/section 151 CPC deserves to be allowed?
2. Whether the application filed by the plaintiff Under order 6 Rule 17 r/w/section 151 CPC deserves to be allowed?
3. What Order?

6. My findings to the above said points are as follows :-

Point No.1 :-In the Negative

Point No.2 : In the Affirmative

Point No.3 :-As per the final Order,
for the following:-

REASONS

7. Point No.1:- The present suit is filed one for the relief of Partition and separate possession. The applicant/defendant No. 4 stated that service of suit summons she did not appear before the Court and filed vakalath. During pendency of this suit her father and her brothers have agreed to settle the matters and agreed to give 30 guntas of property by way of gift. But, by colluding themselves with the Sub-register, Srirangapatna have created a

relinquishment deed instead of gift deed. Hence, she prays to transpose herself as plaintiff No. 2 from the position of defendant No. 4.

8. On perusal of records and the pleading the evidence of both the parties not yet completed. U/O 23 Rule 1(a) of CPC where the suit is withdrawn or abandoned by a plaintiff Under Rule 1 and a defendant applies to be transposed as a plaintiff. Under Rule 10 of order 1, the court shall in considering such applications, have due regard to the question whether the applicant has substantial question to be decided as against any of the other defendants. Here in this case the plaintiff has not withdrawn the suit or abandoned herself from her claim. In the suit of Partition position of the parties are one and the same and the rights of the parties in the properties in dispute are settled.

9. On perusal of records the 4th defendant appeared through counsel and also file written statement. But, now she has filed this application stating that she has not engaged any counsel and also not filed any vakalath. Further, she has not filed any vakalath along with this application. Furthermore, she has also not stated any reasons to show that the plaintiff is trying to withdraw the suit or she has abandoned from the claim. Therefore, she can claim her right over the suit property, if she is having by producing necessary documents. Whether the parties

to the suit are having any right of Partition in the suit properties or whether the defendants fraudulently obtained their signature on relinquishment deed it requires a fully fledged trial. Therefore, the applicant / 4th defendant has not made out any reasonable grounds to allow the application. Hence, **I answer Point No. 1 in Negative.**

10. Point No. 2 : The plaintiff has filed IA No. VIII U/o 6 Rule 17 of CPC seeking permission to amend the plaint by inserting additional new facts after para 6 of the plaint. In the affidavit she stated that during pendency of this suit her father and her brothers have agreed to settle the matter and agreed to give 30 guntas of property by way of gift. But, by colluding themselves with the Sub-register, Srirangapatna have created a relinquishment deed instead of gift deed. Therefore, the said facts as to be narrated in the pleadings as the said facts are subsequent to this suit.

11. The defendants have not filed any objections to this application. On perusal of available records the evidence of plaintiff was not concluded. The documents dt. 22-09-2014 ie., relinquishment deed discloses that the plaintiff/ the defendant No. 4 and 6 have executed a relinquishment deed in favour of 1st defendant. But, the plaintiff denied the due execution of said

document stating that her signature was obtained by playing fraud. Whether the plaintiff executed a said document or not it requires evidence. The proposed amendment is subsequent to the suit. Further, the said amendment does not changes the nature of the suit nor cause of action. Furthermore, the defendants have not denied the statement of the plaintiff by filing objections.

12. The counsel for the plaintiff also produced the Judgment reported in **2006(1) KCCR 458 passed in B.M. Kamalanabha Reddy v/s Munivenkatappa and others, 2007(4) KCCR 2249 passed Xavier Ferrao and another v/s Theresa Ferrao** by the Hon'ble High Court of Karnataka where in the Hon'ble Court held that, if the amendment sought would enhance justice and would avoid multiplicity of proceedings the Court can allow the application for amendment in a liberal manner if the applicant shows acceptable and reasonable grounds for the proposed amendment.

13. Here in this case the proposed amendment seeking by the plaintiff is subsequent to the suit. Further, the defendants have also not filed any objections by denying the application. On perusal of the record the proposed defendant is required to prove the claim of the plaintiff. Further, the proposed amendment not

changes the nature of the suit. If the application is not allowed it will lead to multiple proceedings between the parties and a very purpose of filing the suit will be defeated. Further, the plaintiff may put to irreparable loss and injustice rather than the defendants. Therefore, on the above reasons I answer Point No. 2 in Affirmative.

14. Point No. 3 : In the light of above discussions I proceed to pass the following :-

ORDER

The IA No. VII U/O 23 Rule 1(A) of R/W/S 151 of CPC filed by the applicant / defendant No. 4 is hereby dismissed.

The IA No. VIII U/O 6 Rule 17 R/W/S 151 of CPC filed by the applicant / plaintiff is hereby Allowed.

The plaintiff is permitted to amend the plaint and shall furnish amended plaint.

**Prl. Civil Judge & JMFC,
Srirangapatna.**

*Order Pronounced in the Open Court
(Vide Separate Order)*

*The IA No. VII U/O 23 Rule 1(A) of
R/W/S 151 of CPC filed by the applicant /
defendant No. 4 is hereby Dismissed.*

*The IA No. VIII U/O 6 Rule 17 R/W/S
151 of CPC filed by the applicant / plaintiff is
hereby Allowed.*

*The plaintiff is permitted to amend the
plaint and shall furnish amended plaint.*

*To carry out amendment and to furnish
amended plaint by: 07-07-2020.*

**Prl. Civil Judge & JMFC,
Srirangapatna.**

