

ORDERS ON IA-V FILED U/O 6 RULE 17 OF CPC

Plaintiffs have filed the application seeking permission to add proposed properties to the plaint as mentioned in the application for amendment.

2. In the accompanying affidavit the plaintiffs have stated that the suit is filed for partition and separate possession of the suit schedule properties. The above case is posted for cross examination of PW1. At the time of filing of the suit, by oversight not included the proposed schedule item No.12 to 15 situated at Halladakoppal Village, Bilikere Hobli, Hunsur Taluk, Mysuru District. This fact is came to their knowledge recently. The above said reason is not intentional one but it is for bonafide reason, hence, to include the proposed schedule item No.12 to 15 to the plaint and to amend the plaint. No prejudice will be caused to the other side if the application is allowed other wise they will be put great hardship and difficulty. Hence, the application.

3. This application is resisted by the defendant No.1 to 3 and 6 and they have contending that the application is not maintainable either under law or on facts. The matter mentioned in the application is false and fabricated for this

suit. Already issues are framed and the matter is posted for cross examination of PW1, at this stage plaintiffs have filed the application seeking amendment of plaint but they have not produced supportive documents. The suit schedule item No.12 to 14 properties are self acquired properties of husband of 1st defendant and father of 2 and 3 and brother of 6th defendant late Shivannegowda through darakasthu. The said properties are already partitioned through Panchayath. The plaintiffs and other defendants have no right or interest over the suit schedule properties. The defendant No.1 to 3 are the only legal heirs of late Shivannegowda. Hence, on these and other grounds they prayed to dismiss the application.

4. I have heard the learned counsel for the plaintiffs and defendants. On careful and meticulous perusal of the materials available on record it is found that the plaintiffs have filed the present suit against the defendants for partition. The plaintiffs have assigned the reasons in the affidavit annexed to the application and also argued before the court that they came to know the above mistake recently which is crept by oversight. Now by way of amendment plaintiffs are seeking to amend the plaint to add proposed properties item No.12 to 15 to the plaint schedule. On perusal

of above said contentions and order sheet of the suit it appears as there is no doubt the application for amendment is brought by the plaintiffs after commencement of trial. But there is no dispute that suit is for partition and the suit may be dismissed only because of non inclusion of other properties of the family as per law and on that ground plaintiffs would be out of suit. Further there is no bar to allow the application for amendment of pleadings which are necessary to resolve the dispute between the parties effectively on merits if the proposed amendment will not cause any harm or injury to the adverse party. The objection raised by the defendants can be looked into on merits and they are at liberty to file their additional written statement in this respect.

5. At this stage the basic test for allowing amendment application has to be considered on the ground, whether the proposed amendment will change the nature of the suit or will change the cause of action or would displace the other side in entirety. In view of the reason assigned above and in the light of said principle enunciated in the catena of decisions, in my considered opinion if the amendment is allowed to prevent partial partition no harm or injury will be caused to the defendants.

6. Therefore, in view of the above said basic principles on amendment of pleadings, the objection of the learned counsel for the defendants is sans merit and does not hold any water. In the light of background facts, the application for amendment deserves to be allowed just to resolve the controversy between the parties and to minimize the litigation. Hence, I proceed to pass the following order.

O R D E R

IA No.V filed by the plaintiffs U/O
6 Rule 17 of CPC is hereby allowed on
cost of Rs.400/-.

The plaintiffs are permitted to
carryout amendment and to furnish
amended plaint by 02.09.2024

Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.