

KAMS300043752022



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 23rd day of October, 2024.

OS No.183/2022

Plaintiff: Sannappanyaka @ Sannappa,
S/o Late Sannasiddanayaka,
Aged about 53 years, R/at No.407,
Nayakara Street, Yelavala village
and Hobli, Mysore Taluk and District.

-Vs-

Defendants: 1. Smt.Subbamma, W/o Late Sannasiddanayaka,
Aged about 78 years,
2. Smt.Hosuri, W/o Late Devanayaka,
Aged about 53 years,
3. Savitha, W/o Rajesha,
Aged about 34 years,
R/at Dharmapura village, Bilikere Hobli,
Hunsur Taluk.
4. Mahesha, S/o Late Devanayaka,
Aged about 32 years,

5. Bhimanayaka, S/o Late Sannasiddanayaka,
Aged about 58 years,
6. Marinayaka, S/o Late Sannasiddanayaka,
Aged about 54 years,
7. Swamynayaka, S/o Late Sannasiddanayaka,
Aged about 49 years,
Defendants No.1, 2, 4 to 7 are residing at
Vaddambalu village,
Hanagodu Hobli, Hunsur Taluk.
8. Smt.Jayama, W/o Mariswamy,
D/o Late Sannasiddanyaka,
Aged about 46 years,
R/at Nayakara Beedi, Bilikere village,
Gavadagere Hobli, Hunsur Taluk.
9. Smt.Sakamma, W/o Mahadeva,
D/o Late Sannasiddanayaka,
Aged about 44 years, R/at Kurajan Road,
Kalkunike, Hunsur Town.
10. Smt.Rathnamma, W/o Jayanna,
D/o Late Sannasiddanayaka,
Aged about 41 years,
R/at Harave Ramenahalli village,
Gavadagere Hobli, Hunsur Taluk.

1.	Provision under which the application is filed	:	Under Order VI Rule 17 R/w Section 151 of CPC
2.	Relief sought for	:	Amendment of plaint
3.	The date on which the application is filed	:	19.08.2024
4.	Number of the application	:	IA No.V

5.	The date on which the objection is filed by different opponents	:	03.09.2024
6.	The date on which the orders passed on the said application	:	23.10.2024

ORDERS PASSED ON IA NO.V

The learned counsel for the plaintiff filed IA No.V under Order 6 Rule 17 R/w Section 151 of CPC to insert item No.5 to the suit schedule.

2. The application is supported with the affidavit of the plaintiff wherein it is stated that, the suit is filed by him against the defendants for the relief of partition and separate possession in respect of the suit schedule properties. The case is posted for cross-examination of PW1 and at that time it was observed that by oversight item No.5 property has not been included in the suit. The proposed amendment if not permitted the plaintiff will be put to great hardship. The proposed amendment will not change the nature of the suit and it is necessary to prove his case. Hence, prayed to allow the application.

3. On the other-hand the learned counsel for the defendants filed the objection contending that, the application is not maintainable under law or on facts. Already the chief-examination of the plaintiff was completed and now the case is

set down for cross-examination. The property to be inserted is not at all connected to this suit and no documents are produced. Hence, prayed to reject the application with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and the defendants and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the point that arise for consideration are as hereunder:

POINTS

1. Whether the proposed amendment is just and necessary to determine the real questions in controversy between the parties?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:** The plaintiff has filed this suit against the defendants seeking the relief of partition and separate possession of his 1/9th share in the suit schedule properties. It is the specific case of the plaintiff that, himself and the defendants are the members of Hindu Joint Family and all the suit schedule properties are the joint family properties of

himself and the defendants. In spite of his demand with the defendants to divide the properties they have not chosen to effect partition. Hence, the plaintiff is having 1/9th share in the suit schedule property and he has filed the suit claiming his share. After filing of the suit the court issued summons to the defendants and they have appeared through their counsel. The 6th defendant has filed the written statement and it has been adopted by other defendants. In the written statement the defendants have specifically denied the case of the plaintiff.

7. It is also contended that, the plaintiff is not the member of the Hindu Joint family. It is also contended that, when the plaintiff was aged 12 years he was given in adoption to one Bhairanayak of Yelawala village as per customs and since then the plaintiff became the adopted son of Bhairanayak and residing at Yelawala village. It is also contended that, as per custom the plaintiff married daughter of Bhairanayaka by name Bhagayamma and residing in his house as a son. It is also contended that, the plaintiff and his wife Bhagayamma have inherited the properties of Bhairanayaka, after his death and sold the said property and living a luxurious life. The plaintiff is not at all the member of the Hindu Joint family.

8. On the basis of rival pleadings of the parties this court has framed the issues. In order to substantiate the case the plaintiff examined himself as PW1 and got marked 11 documents as per Ex.P1 to Ex.P11. When the case was posted for cross-examination of the plaintiff this application came to be filed. In the plaint the plaintiff has described totally 4 items of properties and by way of amendment the plaintiff now wants to insert a property in Sy.No.98/2 measuring 15 guntas out of 27 guntas situated at Vaddambalu village, Hanagodu Hobli, Hunsur Taluk. The objection raised by the defendants is that, already the trial has been commenced. It is very necessary to mention that, the suit is for the relief of partition. Whether the plaintiff is having a share in the suit schedule properties is to be determined after complete trial. It is settled principles of law that, in a suit for partition all the properties shall be included. As per the plaintiff the proposed property is also family property. The burden is upon the plaintiff to prove the same. The proposed amendment will not change the nature of the suit and its cause of action. On the other-hand the defendants will get an opportunity to file additional written statement. The delay caused by the plaintiff could be compensated by imposing costs. Accordingly, Point No.1 is answered in the affirmative.

9. **Point No.2**: In view of the reasons discussed above this court proceeds to pass the following:

ORDER

IA No.V filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of CPC is hereby allowed with costs of Rs.250/-.

Accordingly, the plaintiff is permitted to amend the plaint as sought for.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 23rd day of October, 2024)

(Anitha)

Addl. Senior Civil Judge and JMFC,
Hunsur.