

KAMS400020392018



**IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa Sambrani**

Dated This the 22nd day of July 2022

O.S./69/2018

Plaintiff : Smt. *Savithramma*

Vs

Defendants : Smt. Kamamma and others

: I.A.NO.4 :

APPLICANT: *Smt. Savithramma, 55 Years,
W/o. Sri. Krishnegowda,
D/o late Uddegowda @ Uddugowda,
R/at Thattekere village,
Kalasthavadi village,
Hanagodu Hobli,
Hunsur Taluk.*

.... plaintiff

Vs.

OPPONENTS: *1.Smt. Kamamma, 63 years,
W/o. Late Govindegowda,*

*D/o late Uddegowda @ Uddugowda
R/at Kalluru Naganahalli Village,
Yelwala Hobli, Mysuru Taluk.*

2. Sri. Rajegowda, 62 years,
S/o late Uddegowda @ Uddugowda

3. Sri. Somegowda, 59 years,
D/o late Uddegowda @ Uddugowda

4. Smt. Rathnamma, 57 years,
W/o late Shivananjegwoda,
D/o late Uddegowda @ Uddugowda,
R/at Thattekere village,
Kalasthavadi village,
Hanagodu Hobli,
Hunsur Taluk.

5. Sri. Nagegowda, 53 years,
S/o late Uddegowda @ Uddugowda

6. Sri. Shankaregowda @
Shashishekara, 51 years,
S/o late Uddegowda @ Uddugowda

7. Smt. Yashodhamma, 49 years,
W/o Kumaraswamy,
D/o late Uddegowda @ Uddugowda
R/at K.M.Hundi village,
Alanahalli Post,
Hampapura Hobli,
H.D.Kote Taluk.

8. Smt. Meenakshi, 45 years,
W/o Shankaregowda @ Shashekara,

- Defs. No.2, 3, 5, 6 & 8 are
R/at Beeranahalli village,

Hebbalu Hobli,
K.R.Nagar Taluk.
..... *defendants*

: ORDER ON I.A.No.4 :

The learned counsel for the plaintiff has filed this application Under Order 6 Rule 17 of CPC seeking permission to amend the plaint.

2. This application is objected by the defendants No.2, 3, 5 and 6 by filing detailed objections.

3. Heard and perused the records.

4. The points that arise for my consideration are as follows:

1. Whether the application filed by the plaintiff under Order 6 Rule 17 CPC., seeking permission to amend the plaint, deserves to be allowed?

2. What order?

5. My findings on the above points are as follows:

Point No.1 : In the Affirmative

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

REASONS

POINT No.1:-

6. The plaintiff has filed this suit for the relief of partition and separate possession against the defendants over the suit schedule properties. When the matter is pending for further chief of PW.1 the plaintiff has come up with this application seeking amendment of plaint by adding one more property as Item No.11.

7. In support of the application the plaintiff has sworn to the affidavit and submitted that at the time of filing the suit due to oversight the application schedule property was left out to include in the plaint schedule. Recently, she obtained the document in respect of this property and the said property is also their ancestral property. As such she is entitle for share over the application schedule property. If this application is not allowed, she will be deprive her right over the said property. On the other hand, if this application is allowed, no hardship would be caused to the other side. Hence prayed to allow the application.

8. On the other hand, the defendants No.2, 3, 5 and 6 have filed their objections and denied the

contents of the affidavit submitted by the plaintiff and they further submitted that, plaintiff had knowledge about the application schedule property and she had also knowledge about partition made between themselves including the plaintiff along with all the suit schedule properties including the application schedule property as per the court decree in OS.NO.366/1989 before the Munsiff court, K.R.Nagar. At that time the plaintiff has already taken her share through gold ornaments worth Rs.20,000/- in the year 1985-86 and 1989.

9. In the said partition the application schedule property written statement given to the share of defendants No.2, 3, 5 and 6. After the partition these defendants are in possession and enjoyment of the application schedule property with their respective shares including the Item No.1 to 9 of the properties. After the partition, the 5th defendant has purchased the Item No.10 from his own income from H.T. Appajjigowda and his son Ramachandregowda for a sale consideration of Rs.24,500/- on 16.10.2001. These facts are well within the knowledge of the plaintiff. In spite of that the plaintiff has filed this false application.

10. On perusal of entire records it appears that the plaintiff intended to include one more property as suit schedule Item no.11 which is mentioned in the application by way of amendment. But the defendants No.2, 3, 5 and 6 specifically contended that the application schedule property is already partitioned through the court decree and the Item No.10 has fallen to the share of these defendants and since the date of partition they are in possession of their respective shares including the Item Nos.1 to 9. In this regard the defendants have also produced the certified copy of the order sheet in O.S.No. 366/1989. But, at this pretrial stage it cannot be ascertained that whether the suit item No. 11 already partitioned in between them and fallen to the share of defendants No.2, 3, 5 and 6. However, the defendants will be given an opportunity to prove the said contentions during the trial. If at all, the contentions raised by the defendants would be true, then definitely plaintiff would not get any relief over the same. Therefore, the contentions raised by the defendants at this stage are not tenable. If the property is included in the suit schedule property it will not take away the rights of the defendants. Therefore, inclusion of all the joint family properties

is just and necessary for complete adjudication of the suit. Therefore, the application filed by the plaintiff seeking amendment of plaint by inserting or adding the Item No.11 is deserves to be allowed. Based on the defence taken by the defendants, the additional issues are framed. Accordingly, I answer Point No.1 in the **Affirmative**.

POINT NO.2:-

11. For the reasons stated above, I pass the following:

O R D E R

*IA.4 filed by the plaintiff
Under Order 6 Rule 17 of CPC
seeking permission to amend
the plaint is allowed.*

*To carry out amendment and
to furnish amended plaint.*

(Dictated to the stenographer, transcribed and typed by her, added some paragraphs on computer, corrected and then pronounced by me in the open Court, on **22nd July 2022**)

**(Sujata M. Sambrani)
Senior Civil Judge & JMFC
K.R.Nagar.**

