

KAMS600001532023



O.S./80/2023

IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA

Present
Sri.A.SAMIULLA
B.Sc., LL.B.,
Senior Civil Judge,
Periyapatna.

Dated: 15th Day of November 2023

OS.No.80 of 2023

Sri.Swamynayak

..... Plaintiff

Versus

Smt.Akkayamma & Ors.

..... Defendants

IA.No.2

Sri.Swamynayaka

.... Applicant/plaintiff.

Versus

Smt.Akkayamma & Ors

.... Opponents/Defendants.

Provision under which IA is filed	u/Order 6 Rule 17 of CPC
Relief sought for	Amendment of plaint
Date of filing of application	09.08.2023
Application No.	2
Date of filing objection	31.08.2023
Date of order	15.11.2023

:Order on IA-2; u/O 6 Rule 17 CPC:

Plaintiff moved this application seeking permission to amend the plaint schedule.

Proposed amendment is; to insert 76 cents after sale of 8 cents in suit item-2.

2. Defendants resisted the application by filing objection statement.

3. Heard arguments from both side.

4. Following point arises for consideration:

Whether the proposed amendment is necessary for the complete adjudication of lis?

5. Answer to the above point is in ***affirmative*** for the following;

REASONS

6. Point-1: At the outset; suit is filed for partition and separate possession of plaintiff's 1/3rd share in the suit properties by asserting that; his father Ramanayaka died leaving behind his wife Akkayamma (D1) and sons Swamynayaka (plaintiff) and Kumarnayaka (D2); they constituted joint family; suit properties are ancestral properties; there is no severance of joint status; hence, suit is filed for partition.

7. Defendants resisted the suit by filing written statement. They contended that; plaintiff filed suits for partition in OS.No.59/21 & OS.No.219/21, which were dismissed for non-prosecution.

Suit item-1 was granted to Subbanayaka, who died in the year 1996 leaving behind two sons Deva Nayaka and Rama Nayaka. Rama Nayak died on

09.0812. Said property is not possible to identify, as such it is not liable for partition.

Suit item-2 is allotted to the defendant-1 under a registered partition deed dated 22.10.20 and her name is mutated under MR.No.T12/20-21. She has sold major portion of suit item-2. Suit item-2 is not in existence as shown in the plaint schedule. Plaintiff has no right over the suit item-2.

Suit item-3 is within the suit item-1, which is constructed by the wife of defendant-2, as such said property is not available for partition.

Plaintiff has agreed to receive Rs.20 lakhs towards settlement; he has received Rs.15 lakhs; they are ready to pay the balance amount of Rs.5 lakhs. Hence, they prayed to dismiss the suit.

8. After completion of pleadings; matter was set

down for hearing on the interim application; at that time plaintiff filed the application at hand for the relief stated *supra* by stating that; in suit item-2 an extent of 8 cents is sold to one Roopa, as such the extent sold is to be deducted in suit item-2.

9. Defendants objected that the application by contending that; application is filed at belated stage; it introduces a new case as well as new cause of action. Hence, they prayed to reject the application.

10. It is well settled principle that; all amendments ought to be allowed which satisfy two conditions viz., not working injustice to the other side and of being necessary for the purpose of determining the real questions in controversy between the parties.

11. Suit is filed in respect of 84 cents of land (suit

item-2) in which 8 cents are jointly sold by the plaintiff and defendants in favour of Roopa; now proposed amendment is to delete the 8 cents which is already sold.

12. In the backdrop of factual situation at hand the proposed amendment is absolutely necessary for complete and effective adjudication of real controversy between the parties to lis. It will not cause any prejudice to the defendants because it is an admitted fact that portion of suit item-2 is already sold. Proposed amendment will not alter the nature of suit. Thus, application deserves to be considered.

13. It is worth to note that; the rule of amendment is indeed a rule of justice, equity & good conscience. Power of granting amendment should be exercised in the larger interest of doing full and

complete justice to the parties before the Court. Amendment is granted unless the party seeking amendment acts malafide. Here, there is no malafide on the part of plaintiff in seeking amendment, which is necessary for effective adjudication of lis. In the light of discussion *supra* the above point is answered in affirmative and proceeds to pass the following;

ORDER

IA-2; under Order 6 Rule 17 r/w Section 151

CPC filed by the plaintiff is allowed.

Plaintiff is permitted to amend the plaint.

(Dictated to the Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 15.11.23).

sd/-

(A.Samiulla)
Senior Civil Judge,
Periyapatna.