

KAMS600002722020



O.S./15/2020

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA.**

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

Dated: 8th Day of February 2023

OS.No.15 of 2020

Smt.Subbamma & Ors.

..... Plaintiffs

V/s

Smt.Sharadamma & Ors.

..... Defendants

IA.No.9

Sri.Harisha.P.N.

.... Applicant/P10

V/s

Smt.Sharadamma & Ors.

.... Opponents/Defts

Order on IA-9; u/O 6 Rule 17 r/w Section 151 of CPC:

Plaintiff-10 moved this application seeking

permission to amend the plaint schedule i.e., to add item-12 in the plaint schedule. Proposed amendment reads thus:

"ಪಿರಿಯಾಪಟ್ಟಣ ಟೌನ್, ಪುರಸಭಾ ಸರಹದ್ದು, ಬೆಟ್ಟದಪುರ ರಸ್ತೆಯ, ಪೂರ್ವಭಾಗದ ಪಿರಿಯಾಪಟ್ಟಣಕ್ಕೆ ಸೇರಿದ ಅಸೆಸ್‌ಮೆಂಟ್ ಸಂಖ್ಯೆ 1655 ಆದ ಪೂರ್ವ-ಪಶ್ಚಿಮ-66 ಅಡಿಗಳು, ಉತ್ತರ-ದಕ್ಷಿಣ -198 ಅಡಿಗಳ ಅಳತೆಯ ಮಂಗಳೂರು ಹೆಂಚಿನ ಮತ್ತು ಎ ಸಿ ಶೀಟಿನ ವಾಣಿಜ್ಯ ಮಳಿಗೆಗೆ ಚೆಕ್ಕು ಬಂಧಿ: ಪೂರ್ವಕ್ಕೆ : ದಾವ 5 ನೇ ಐಟಂ ಸ್ವತ್ತಿನ ಪೈಕಿ ಸರ್ವೆ ನಂ 149/1 ಎ 1 ಎ, ಪಶ್ಚಿಮಕ್ಕೆ : ಬೆಟ್ಟದಪುರ ರಸ್ತೆ, ಉತ್ತರಕ್ಕೆ : ನೀರು ಹರಿಯುವ ಕೋಡಿ ಜಾಗ, ದಕ್ಷಿಣಕ್ಕೆ : ಉದ್ದೇಶಿತ ಸೇರ್ಪಡೆ ಮಾಡಲು ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಯ ಷೆಡ್ಯೂಲ್ಡ್ ಅಸೆಸ್‌ಮೆಂಟ್ ನಂ 1654 ರ ಐಟಂ ಸ್ವತ್ತು".

2. Defendants have not filed objection statement.

3. Heard arguments.

4. Following point arises for consideration:

Whether the proposed amendment is necessary for the effective 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

& separate possession. Defendants resisted the suit by filing written statement. They contended that the suit is bad for non-inclusion of all properties.

7. Plaintiffs filed the application at hand for the relief stated *supra* by stating that; at the time of filing suit by oversight the property available for partition is not included in the plaint schedule. Said mistake is to be rectified by way of amendment, which will not alter the nature of suit or the cause of action and it will not amount to introducing of new case.

8. 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.

9. In the case at hand; suit is filed for partition and

separate possession; Defendants in written statement have specifically contended that; all properties available for partition are not included in the plaint schedule. It is well known that suit for partial partition is not maintainable and all the properties available for partition must be included in the suit.

10. It is worth to note that; the rule of amendment is indeed a rule of justice, equity and good conscience. The 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 plaintiffs in seeking amendment, which is necessary to avoid future complication narrated supra.

11. Discussion *supra* manifest that; the proposed amendment is necessary to determine the real

questions in controversy and it will not cause any prejudice to the other side. The proposed amendment will not alter the nature of suit. No prejudice will be caused to other side because the burden to prove the ancestral nature of property is on the plaintiffs. Thus, the application deserves to be considered. In the backdrop of above discussion coupled with the dictum laid in the decisions *supra* the above point is answered in affirmative and proceeds to pass the following;

ORDER

IA-9; under Order 6 Rule 17 CPC filed by the plaintiffs is allowed.

Plaintiffs are permitted to amend the plaint.

No order as to costs.

(Dictated to Stenographer & transcribed by her, corrected and initialed by me & then pronounced in the open Court on 08.02.23).

sd/-

(A.Samiulla)
Senior Civil Judge,
Periyapatna.