

KAMS600021582022



O.S./163/2022

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

**Present**

**Sri.A.SAMIULLA.**

**B.Sc, LL.B.,**

**Senior Civil Judge,  
Periyapatna.**

**Dated: 8<sup>th</sup> Day of September 2023**

**OS.No.163 of 2022**

**\*\*\***

**Plaintiff:**

Smt.Meenakashi.

**V/s**

**Defendants:**

Sri.Cheluvegowda & Ors.

**IA.No.5**

**Applicant/Plaintiff.**

Smt.Meenakashi.

**V/s**

**Opponent/plaintiff**

Sri.Cheluvegowda & Ors.

**Order on IA-5; u/O 6 Rule 17 r/w Section 151 of CPC:**

Plaintiff moved this application seeking permission

to amend the plaint. Proposed amendment reads thus:

ವಾದಪತ್ರದ ಖಂಡಿಕೆ 2 ನೇ ಖಂಡಿಕೆಯ ಪ್ರಾರಂಭದಿಂದ ಮುಂದುವರೆದು "ವಾದಿಯ ಹಾಗೂ 2 ನೇ ಪ್ರತಿವಾದಿ ತಾಯಿ ಶಾರದಮ್ಮರವರು ಪಿರಿಯಾಪಟ್ಟಣ ತಾಲ್ಲೂಕು, ರಾವಂದೂರು ಹೋಬಳಿ, ಕೆಲ್ಲೂರು ಗ್ರಾಮದ ಲೇಟ್ ಚಿಕ್ಕೇಗೌಡ ಹಾಗೂ ಲೇಟ್ ಚೆಲುವಮ್ಮ ರವರ ಮಗಳಾಗಿದ್ದು, ಸದರಿ ಲೇಟ್ ಚಿಕ್ಕೇಗೌಡ ಹಾಗೂ ಲೇಟ್ ಚೆಲುವಮ್ಮ ರವರಿಗೆ ಒಟ್ಟು 5 ಮಕ್ಕಳಾಗಿದ್ದು ಅವರುಗಳ ಪೈಕಿ 1 ನೇ ಲೇಟ್ ದಶರಥ, 2 ನೇ ಚಂದ್ರೇಗೌಡ, 3 ನೇ ಲೇಟ್ ಶಾರದಮ್ಮ, 4 ನೇ ರಮೇಶ, 5 ನೇ ನಾಗರಾಜರವರುಗಳಾಗಿರುತ್ತಾರೆ. ವಾದಿಯ ಹಾಗೂ 2 ನೇ ಪ್ರತಿವಾದಿ ತಾಯಿ ಶಾರದಮ್ಮರವರು ದಿನಾಂಕ : 25.08.1986 ರಂದು ಪ್ರತಿವಾದಿಗಳ ಮನೆಯಲ್ಲಿ ಮರಣ ಹೊಂದಿರುತ್ತಾರೆ ಎಂಬ ಅಂಶವನ್ನು ಸೇರಿಸಬೇಕಾಗಿರುತ್ತದೆ".

**2.** Defendants-1 & 3 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 effective adjudication of lis?*

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

**REASONS**

**6.** At the outset; suit is filed for partition and separate possession by asserting that; propositus Cheluvegowda (D1) had two wives Sharadamma (mother of plaintiff and defendant-2) and Kempamma (mother of defendants-3 & 4); they constituted joint family; suit properties are ancestral and joint family properties and there is no severance of joint status. When such being the fact; defendants-1 to 3 colluding together with an intention to defraud her legitimate share have executed gift deed in favour of defendant-4 as per MR.No.H6/21-22, which is not binding on her. She demanded to allot her legitimate share but to no avail. Hence, suit is filed.

**7.** Defendants-1 to 3 resisted the suit by filing written statement denying plaint averments in toto and inter alia contended that; plaintiff is not having right to file suit; genealogy shown in the plaint is false. They denied that defendant-1 had two wives and plaintiff is daughter of

first wife Sharadamma, who is not the wife of defendant-1. They denied that suit properties are ancestral & joint family properties. They contended that suit item-1 is the self-acquired property of defendant-1. Suit item-2 is allotted to the share of defendant-1 in family partition effected between him and his brothers. Defendant-1 has executed gift deed in favour of defendant-4 in respect of suit item-2. Among these grounds, they prayed to dismiss the suit.

**8.** After completion of pleadings and settlement of issues; matter was set down for trial; at this stage plaintiff filed the application at hand for the relief stated *supra* by stating that; she and defendant-2 are daughters of Sharadamma, who is daughter of Chikkegowda and Cheluvamma who have five children i.e., Dasharatha, Chandregowda, Sharadamma, Ramesha & Nagaraju; Sharadamma died on 25.08.86.

It is stated that said amendment is necessary for effective adjudication of lis.

**9.** Defendants-1 & 3 objected the application stating that; plaintiff is no way related to them and she has no right over the suit properties despite filed this application to protract the proceedings. Denying other affidavit averments 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.** It is pertinent to note that; here, suit is filed for partition and separate possession by asserting that; plaintiff and defendants constituted joint family and

suit properties are ancestral and joint family properties and there is no severance of joint status. Per contra defendants-1 & 3 resisted the suit by denying the very relationship of plaintiff with the defendant-1. In lieu of denial of relationship now the plaintiff moved this application for the relief stated *supra* to plead about her parents and other family members, which is necessary to establish her relationship with the defendant-1. Under these circumstances the proposed amendment is necessary for complete and effective adjudication of real controversy between the parties. If it is allowed no injustice will be caused to the other side because the entire burden is on the plaintiff to demonstrate the relationship projected by her to claim share in the suit properties.

**12.** Defendants-1 & 3 argued that; amendment is not permissible after commencement of trial unless

requirement of proviso to Rule 17 of Order 6 are satisfied. This contention is not tenable because in case of Balder Singh V. Manohar Singh, **(2006) 6 SCC 498**, the Hon'ble Apex Court held that;

*Commencement of trial as used in proviso to Order 6, Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. In the instant case the evidence of plaintiff side is not completed.*

In a decision reported in **2017 (2) KCCR 1245**, Mahadevappa Vs Shankareppa & Ors, it is held that;

*Though evidence on behalf of plaintiff is complete, yet, it would be appropriate to permit petitioner to bring his amended pleading on record as it would facilitate trial Court to determine real question in controversy.*

In the case at hand also the proposed amendment is warranted to determine the real question in

controversy between the parties to lis.

**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.

**14.** Discussion *supra* manifest that; the proposed amendment is necessary to determine the real questions in controversy and it will not cause any prejudice to other side. Proposed amendment will not alter the nature of suit. Thus, application deserves to be considered. Hence, above point is answered in affirmative and proceeds to pass the following;

**ORDER**

IA-5; under Order 6 Rule 17 r/w Section 151 CPC filed by the plaintiff is allowed on cost of Rs.200/- .

Plaintiff is permitted to amend the plaint.

No order as to costs.

(Dictated to Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 08.09.23).

sd/-

**(A.Samiulla)**  
**Senior Civil Judge**  
**Periyapatna.**