

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.,
AT LINGASUGUR**

Present :-SRI. CHANDRASHEKHARA P. DIDDI, B.A., L.L.M.
Senior Civil Judge & J.M.F.C.
Lingasugur.

O. S. No. 96/2018

Dated: 17th day of February 2024

PLAINTIFF: - 1. Basamma W/o Amarappa Hosagoudru
(Represented by: Sri.SMG., Advocate)

Vs -

DEFENDANT:-1. Shankrappa S/o Basappa and others
(D-1 to 3 Represented by: Sri.KCS, Advocate)
(D-2, 12 Represented by: Sri. Ex-parte)
(D-13 Represented by: Sri. KMHS, Advocate)

I.A.No.23

PETITIONER/ :- Hanumappa.
DEFENDANT NO-9

-Vs -

RESPONDENTS/:- Basamma & others,
PLAINTIFF

~:: ORDER ON I.A.NO.23 ::~

The defendant no-9 filed IA No.23 under Order 6 Rule 17 CPC prays for amendment of the written statement. The defendant prays for insertion of the para no-5(A) in the written statement. The defendant in the IA No: 23 submits that, the defendant no-5 intends to submit that, the suit properties are the self acquired properties of

the Hanumanthappa S/o Hiregaddeppa. During life time of Hanumanthappa, the partition has taken place in between the Hanumanthappa and his sons. Hence, the plaintiffs has no right to seek the partition. In the affidavit, the defendant submitted that, at the time of filling of the WS his counsel has not mentioned the above said defence. If the proposed amendment is allowed, nature of the suit does not change. The proposed amendment is necessary for disposal of the case. Hence, prays for allow the application.

2. The plaintiff filed objection to the application. In the application the plaintiff has submitted that, application is not maintainable either in law or facts of the case. The defendant no-9 not produced any document for the proposed amendment. The defendant no-5 has hatched the plain to drag the proceedings. Already cross-examination of the PW-1 concluded. This court has granted sufficient opportunity to the defendant no-9 to establish his claim. The defendant no-9 adduced the evidence on 02-09-2023 itself. The plaintiff counsel submits that in order to fill up the lacuna, the defendant has filed this application. If application is allowed the plaintiff will be put irreparable lose. On these ground prays for dismissal of the application.

3. Heard the arguments of the plaintiff and defendant's counsel. Perused entire material on record. The following points arise for my consideration is:-

1. Whether proposed amendment is necessary for disposal of the case and application deserves to be allowed?
2. What order?

4. My answers to the above points is as follows:-

Point No.1 : In the Affirmative.

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

~:: **REASONS** ::~

5. **POINT No.1:-** On perusal of the plaint the plaintiffs has filed a suit for partition and separate possession. On perusal of the order sheet, when case posted for argument, the defendant no-9 filed application for reopening of the case and to lead the evidence. This court has allowed the application. Thereafter the defendant has filed the IA No: 23 seeking insertion of para no: 5(a). In the proposed amendment the defendant submitted that the suit properties are self acquired properties of the Hanumantha S/o Hiregaddeppa. Further submitted that during the life time of Hiregaddeppa already partition has taken place in between the Hanumanthappa and his children's. On perusal of the written statement averments, the defendant already taken a defence that the plaintiffs has no right in the suit property. If the proposed amendment is allowed nature of the suit does not change. Further the proposed amendment will not introduce a new cause of action. In order to fill up the lacuna, the defendant filed this application. The Hon'ble Supreme Court in the

decision passed in RK. Agarwal vs KK. Modi held that, if the proposed amendment is necessary for disposal of the case the application is to be allowed. If the proposed amendment is not necessary for disposal of the case, the application is to be dismissed. By applying the above said principal to the present case, this court opines that the proposed amendment is necessary for disposal of the case. Further, if application is allowed nature of the suit does not change. The defendant no-9 has filed this application at the stage of argument, this court opines that the application is to be allowed on cost. Accordingly, I answer point No.1 in affirmative.

6. **Point No.2:** As per above discussion, I proceed to pass the following:-

~:: O R D E R ::~

IA No.23 filed by the defendant
is hereby allowed on cost of Rs.
3,000/- payable to the plaintiff

Subject to payment of cost.
Permitted the defendant to amend the
written statement as prayed in IA
No:23.

For amendment and amended
WS.

Call on: 01-03-2024.

Sd/-
(Chandrashekhar P. Diddi)
Senior Civil Judge and J.M.F.C.,
Lingasugur.