

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE
AND CJM AT RAMANAGARAM**

Dated : This the 02nd day of January 2017

Present

Smt. M.ANITHA.,
B.Sc., LL.B.,
Prl. Senior Civil Judge & CJM,
Ramanagaram.

O.S 377/2012

Plaintiff : Sri.Thimmaiah @ Thimmegowda

(By Sri. S.L., Advocate)

V/s

Defendants : Sri.Thimmaiah and others

(D-1, 2, 2(a) Sri. S.R., Advocate)
(D-2(b), 2(c) Sri. M.D.K., Advocate)
(D-3 and 4 Sri. S.G., Advocate)

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ORDERS ON I.A No.5 FILED BY THE PLAINTIFF
U/O 6 RULE 17 R/W SEC.151 FO CPC

The plaintiff has moved this application seeking permission of the court to amend the plaint to the effect made mention of in the body of the application.

2. In his supportive affidavit to the application, the plaintiff prayed to read the plaint averments as part and parcel of his affidavit. Besides he deposed that, at the time of filing of the suit, due to non availability of documents, he could not mention about the proposed item No.6 in the schedule of the

plaint. The said item No.6 is also one of the Ancestral Hindu Joint Family Properties belongs to his family. Wherefore, it is necessary to introduce the said property to the schedule of the plaint. The proposed amendment will not change the nature of suit. Wherefore, it is prayed to allow the application.

3. The defendant No.1 opposed the application on stating that, the land bearing Sy.No.53, measuring 6 acres 35 guntas of Avaragere village originally belongs to one Subbashasthri S/o Soorabatta from whom, his father purchased 2 acres 2 guntas under registered sale deed dated 16.05.1970 and accordingly the revenue entries got mutated to the name of Chikkeeraiah the father of this defendant. The said property is the self acquired property of the father of this defendant, wherein, the plaintiff has no rights. The said property is not the ancestral property of the plaintiff. In order to cause hardship to this defendant, the present application is filed to introduce the said property to the schedule of the plaint. The plaintiff has not included the properties of defendants No.3 and 4 though they stated about the same in their written statement. Wherefore, it is prayed to dismiss the application with costs.

4. Now the following points emerge for determination:-

1. Whether the proposed amendment is necessary for complete and effective adjudication of the suit?
2. What order?

5. Having heard the arguments of both the counsels, I have perused the application in the background of materials made available. Now findings of the Court on the above points are as under:-

Point No.1:- In the Affirmative

Point No.2:- As per final order

for the following:-

REASONS

6. **Point No.1:-** The proposed amendment is to add one agricultural land bearing Sy.No.53, measuring 2 acres 2 guntas out of 6 acres 35 guntas of Avaragere village as item No.6 in the schedule of the plaint. According to plaintiff, the said property is one of the ancestral properties of him and the defendants and he could not mention about the same at the time of filing of the suit, since no documents are available at that time about the said property.

7. The defendant No.1 only contested the present application. It is his objection that, the said property is the self acquired property of his deceased father Chikkeeraiah and it is not the ancestral property of plaintiff or the other defendants.
8. On verification of the pleadings, it is noticed that, the relationship between the parties is not in dispute. In other words, it is not disputed that, the plaintiff and defendants are the siblings of one Thimmaiah. The plaintiff averred that, there is no partition between the siblings of said Thimaiah and the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants.
9. Some of the defendants already filed their written statement but, the issues not yet settled. It is in this context, the present application is pressed into service. I might have emphasize that, the trial is not yet commenced and the proposed amendment is hardly to add one landed property as item No.6 in the schedule of the plaint. Whether the said property is the ancestral property or the self acquired property of the defendant No.1 is yet to be decided and it is a triable issue. Wherefore, in the considered

view of the court, the proposed amendment would not change the nature of the suit nor introduce a new cause of action.

10. However, there is a delay in filing of the application. Therefore, the inconvenience caused to the defendants by the delay is to be compensated by way of cost. Hence, subject to cost, the application deserves to be allowed. Hence, I am inclined to hold the point is in the "Affirmative" and proceed to pass the following:-

ORDER

I.A-5 filed by the plaintiff U/o 6
Rule 17 of CPC is hereby allowed on
cost of Rs.800/-.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 02nd day of January 2017)

**Prl., Senior Civil Judge & CJM,
Ramanagara.**