

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC, AT
CHANNAPATNA.**

PRESENT:- SRI.MAHENDRA.M B.A, LL.B.,

**Prl.Civil Judge & JMFC.,
Channapatna.**

Dated this 5th day of October-2020

O.S. NO.105/2018

PLAINTIFFS : Sri.C.S.Puttamadegowda & Others
-Vs-

DEFENDANTS : Smt.Ammannamma and others

I.A.No.V

APPLICANT/

DEFENDANT NO.1: Smt.Ammannamma,
W/o Late Shankaregowda,
Aged about 84 years,
R/at; Varagarahalli Village,
Madduru Taluk,
Mandya District.

-V/s-

OPPONENTS /

PLAINTIFFS: 1. Sri.C.S.Puttamadegowda
S/o Late Shankaregowda,
Aged about 69 years,
Rr/at Maruthi Nagara,
Kote, Channapatna Town.

2. Sri.Ramachandra,
S/o Late Shankaregowda,
Aged about 65 years,

R/at: Chakkere Village,
Maluru Hobli,
Channapatna Taluk.
3. Sri.Appajigowda,
S/o Late Shankaregowda,
Aged about 58 years,
R/at: Chakkere Village,
Maluru Hobli,
Channapatna Taluk.
Now R/at Bengaluru.

ORDERS ON I.A.No.V

This is an application filed by the defendant No.1 under order VI rule 17 R/w Section 151 C.PC seeking amend the written statement as sought in the I.A.No.V.

2. The averments of the affidavit filed in support of the application are as follows:-

The plaintiffs filed this suit against the defendants for the relief of partition and separate possession over the suit schedule properties. The defendant No.1 is aged person, because of that reason the defendant No.1 not

implead the proposed amendment contents in the her written statement. After filing of written statement the defendant No.1 obtained the documents in respect of proposed amendment and filed the present application. If this application is allowed there is no change the nature of the suit and the defense taken by the defendant No.1. If this application is allowed no hardship will be caused to the other side, if this application is rejected the defendant No.1 will be put to ir-reparable loss and injury which cannot be compensated. Hence, allow the I.A.NoV.

3. The counsel for the plaintiff No.1 has filed an objection to IA.No.V contended that,the application filed by the defendant No.1 is not maintainable either in law or on facts and the same is liable to be dismissed. The plaintiff No.1 further contended that, the proposed amendment properties are purely self acquired properties of plaintiff no.1. The defendant No.1 has not proper knowledge regarding this application properties, because she has aged about 90 years above. The entire application contention given by the plaintiff No.3, the plaintiff No.3 has collected the all documents from the concerned authority. The plaintiff No.1 further contended that the proposed amendment properties are not joint family properties. The defendant No.1 has not produced any single document regarding income of agriculture

properties. In this stage the trail does not necessary regarding the proposed amendment properties. If this application is allowed the plaintiff No.1 will be put to irreparable loss and injury which cannot be compensated. Hence, reject the I.A.No.V.

4. Heard the arguments and perused the records.

5. The following points are arise for consideration of this court:-

POINTS

1. Whether the applicant/defendant No.1 proves that the application filed by her is deserves to be allowed?
2. What order?

6. This court answer the above points as follows:-

Point No.1:- In the Affirmative

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

REASONS

7. **Point No.1**:- The suit is filed by the plaintiffs against the defendants for the relief of partition and separate possession in respect of suit schedule properties. This case is posted for plaintiffs evidence, in

this stage the defendant No.1 filed present application. The defendant No.1 proposed to include the some paras in the written statement in respect of insertion of some of the properties. The plaintiff No.1 denied the averments of the affidavit filed by the defendant No.1 in support of I.A.No.V.

8. Under order 6 rule 17 of CPC as follows-

“Amendment of pleadings- the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”.

Provided that, no application for amendment shall be allowed after the trial as commenced, unless the court come to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

9. In this case the trial not commenced, now the case is posted for plaintiffs evidence. If this application is allowed not change the nature of suit or cause of action. The plaintiffs filed this suit against the defendants for the

relief of partition and separate possession over the suit schedule properties. The proposed amendment is discloses that, according to defendant No.1 the properties mentioned in the proposed amendment are joint family properties, they are acquired joint family funds. The plaintiff No.1 denied that the said properties are self acquired properties of plaintiff No.1. The plaintiff No.1 purchased the said properties.

10. In this stage cannot be decided whether the proposed amendment properties are joint family properties or self acquired properties, it is required to full pledge trial. The counsel for the both the parties are produced some of the documents in respect of proposed amendment. The discussion about the said documents is not necessary in this stage. The counsel for the plaintiff No.1 relied upon one decision of Hon'ble High Court of Karnataka in RFA No.683/2003 in S.P.Subbarao and Other V/S M.Lakshmanarao and Others. With great respect this decision is not applicable to this stage, this applicable to final judgment. The burden lies on defendant No.1 to proving the contents of her written statement. Hence the I.A.No.V filed by the defendant No.1 is deserve to be allowed. Hence, **Answer the Point No.I in the Affirmative.**

11. **Point No.2**:- For the above reasons this court proceed to pass the following:-

ORDER

The I.A.No.V filed by the defendant No.1 under order VI rule 17 r/w Sec.151 of CPC is hereby allowed subject to cost of Rs.300/-.

Permitted to defendant No.1 amend the written statement as prayed in I.A.No.V.

Sd/-
(MAHENDRA. M)
Prl Civil Judge & J.M.F.C.,
Channapatna..

Order pronounced in open court
(Vide Separate Order sheet)

ORDER

The I.A.No.V filed by the defendant No.1 under order VI rule 17 r/w Sec.151 of CPC is hereby allowed subject to cost of Rs.300/-.

Permitted to defendant No.1
amend the written statement as prayed
in I.A NO.V.

Sd/-
Prl Civil Judge & J.M.F.C.,
Channapatna.