

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

PRESENT: SMT. USHARANI B.N., B.A, LL.B.,L.L.M.,
Addl.Civil Judge & JMFC.,
Channapatna.

Dated this 11th day of September-2023

O.S. NO.308/2021

PLAINTIFF : Sri.Shivanna
-Vs-
DEFENDANTS : Smt.Doddathayamma & Others

I.A.No.III

APPLICANT/PLAINTIFF : Sri.Shivanna
(**By Sri N.T, Adv.**)
V/s
OPPONENTS/DEFENDANTS : Smt.Doddathayamma & Others
(**By Sri B.G, Adv.**)

<i>Provision under which the application is filed</i>	<i>U/O VI R 17 rws 151 of CPC</i>
<i>Relief sought for</i>	<i>For amend the plaint</i>
<i>The date on which the application is filed.</i>	<i>07.06.2022</i>
<i>Number of the application</i>	<i>III</i>
<i>The date on which the objections are</i>	<i>18.07.2023</i>

<i>filed by different opponents</i>	
<i>The date on which the orders were passed on the said application</i>	<i>11.09.2023.</i>

ORDERS ON IA.No.III

The counsel for the plaintiff has filed an I.A No.III under order VI rule 17 r/w Sec.151 of C.P.C. seeking permit to permit the plaintiff to incorporate the amendment to the plaint and by way of addition, deletion and substitution as the same is essential for fair adjudication of questions in issue, in the interest of justice and equity.

SCHEDULE

Amendment No.1: In plaint insert para no.8(a) after para No.8 mentioned as below.

8(a). The plaintiff further submits that , in the year 2019, the defendant No.3 transferred the R.T.C. of agricultural property bearing Survey No.104/3 measuring 26 guntas situated at Ganalu Village, Halagur Hobli, Malavalli Taluk, Mandya District, from her husband “puttegowda’s” name after his death. This property is purchased from earnings of joint family and is a joint family property. The plaintiff herewith submits the copy of the R.T.C in the name Marithyamma (Defendant No.3) which may be marked as Document No.10 for the kind perusal of this court.

Amendment No.2: In Complaint insert Para No.8(b) after para No.8(a) mentioned as below.

8(b). The plaintiff further submits that, in the year 2019, the defendant No.3 transferred the R.T.C. of agricultural property bearing Survey No.105/3 measuring 1 Acre 09 guntas situated at Ganalu Village, Halagur Hobli, Malavalli Taluk, Mandya District, from her husband “Puttegowda’s” name after his death. This property is purchased from earnings of joint family and is a joint family property. The plaintiff herewith submits the copy of the R.T.C in the name Marithyamma (Defendant No.3) which may be marked as Document No.11 for the kind perusal of this court.

Amendment No.3: In complaint insert Para No.8(c) after Para No.8(b) mentioned as below.

8(c). The plaintiff further submits that, in the year 2019, the defendant No.3 transferred the R.T.C . of residential property bearing Survey No.138/6 measuring 1.09 guntas situated at Sunnaghatta village, Kasaba Hobli, Channapatna Taluk, Ramanagara District, from her husband “Puttegowda’s” name after his death. This property is a joint family property. The plaintiff herewith submits the copy of the R.T.C in the name Marithyamma (Defendant No.3) which may be marked as Document No.12 and demand extract which may be marked as Document No.13 for the kind perusal of this court.

Amendment No.4: In Schedule property para insert item No.1 before line No.1 before line No.1 “All that piece and parcel of the Agricultural property bearing Sy.No.136/9”

Amendment No.5: In schedule property para insert Item No.2 after Item No.1 property mentioned as below

Item No.2:

All that piece and parcel of the Agricultural property bearing Sy.No.104/3 measuring 26 Guntas situated at Ganalu Village, Halagur Hobli, Malavalli Taluk, Mandya district and being bounded on:

East by	:	Government road.
West by	:	Private property
North by	:	Private property
South by	:	Private property

Amendment No.6: In Schedule property para insert Item No.3 after Item No.2 property mentioned as below

Item No.3:

All that piece and parcel of the Agricultural property bearing Sy.No.105/3 measuring 1 Acre 9 Guntas situated at Ganalu Village, Halagur Hobli, Malavalli Taluk, Mandya District and being bounded on:

East by	:	Government road.
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West by : Private property
North by : Private property
South by : Private property OS No.308/2021

Amendment No.7: In Schedule property para insert Item No.4 after Item No.3 property mentioned as below

Item No.4:

All that piece and parcel of the Agricultural property bearing Sy.No.138/6 measuring 1.04 Guntas situated at Sunnaghatta Village, Kasaba Hobli, Channapatna Taluk, Ramanagara District and being bounded on:

East by : Private Property
West by : Property of Vasanth Raja Urs
North by : Road and Rathnammani and
Pramodh Raja Urs property
South by : Chikkaiah @ Mughappa Property

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

The plaintiff had filed the above suit for partition against the defendants and have sought temporary Injunction from non-alienating of the Suit schedule Item No. I property till the disposal of the suit. The averments made in the Plaint may kindly be read as part and parcel of this affidavit in order to

avoid repetition of facts. He cannot procure documents of other properties which are purchased from joint family earnings, hence cannot file the same at the time of filing the suit but the same are necessary to be added before proceeding to the further stage in the case. Hence this affidavit. Therefore, he humbly beg to pray that this court be that the amendment sought to be introduced does not nullify the accrual of any legal right in the defendant owing to earlier non introduction of the amendment. On the other hand proposed amendment tries to arrive at just decision in the matter in issue and undo the act of injustice done to the plaintiff during pendency of the suit. During the filing of the above suit which he was unable to file needs to be added. Hence this affidavit. If the application is not allowed they will be put to irreparable loss and hardship, which cannot be compensated in terms of money leading to multiplicity of proceedings, On the other hand no loss or hardship will be caused to the other side by allowing application. He have approached this court with clean hands and the averments made above are true and correct to the best of his knowledge, information and belief and he have not suppressed any material facts. **Hence filed this application.**

3. The counsel for the defendants has filed an objection to I.A.No.III and contended that, the application filed by the

plaintiff is not maintainable in the eye of law, that the plaintiff seeking amendment inserted in plaint para No.8(a) to (c) and suit schedule item No.2,3,4 But what are the properties which are stated by the plaintiff to insert in the schedule, the schedule item No.2 is a purchased property of the husband of defendant No.3, The said property purchased by the Puttegowda on 29.09.2011B under Registered sale deed bearing Book No.MLV 1-04122-2011-2012, C.D.No-MLV 77 dated 30.11.2011 measuring 1 Acr 0.26 guntas, bounded on East by: Govt Land, West By:Road, North by:Land of Kallegowda, Soth by:Remaining land of vendor, After the death of Puttegowda katha mutated in the name of Defendant No.3 M.R.No.H15/2019-2020. Schedule item No.3, Sy.No. 105/3 was purchased by Puttegowda on 29.11.2011 from one Mayanna under Book No.1, MLV1.04129-2011-2012, C.D. No.MLVD-77 dated 30.11.2011, measuring 1 Acr 0.26 guntas bounded on East by:Govt Land, West by:Road, South By:land of Marisidegowda, South by:Land of Mayanna. Schedule Item No.4, Sy.No.138/6 measuring 0-0.1.04 guntas was purchased by Puttegowda @ Puttaiah from one Lingraju and his family, Under Book NO-1CAN-1-03510-2014-15, C.D.No.CAND 218 dated 29.09.2014 Bounded on East by:Block No.1 Remainaing land of Vendor, West By:Remainaing land of Vendor, North By:Road, South By:Land of Chikkanna @ Mooganna, After the death of Puttegowda Katha was mutated in

the name of the defendant No.3 What are the properties seeking inserting as a plaint schedule Item No.2 to 4 are all Self acquired property of the defendant No.3, Those properties are purchased properties of the 3rd defendant husband is a exclusive properties, there is no any joint nuclious. During the life time of plaintiff and Defendant Family partitioned their properties. Some of the properties are sold by the plaintiff along with defendant family members infavour of Ramesh S/o V.Ramaraju in the year-2007 and 2010, There are four sale deeds are executed in favour of Ramesh, Because properties are continued as joint name. On 23.08.2010 They have sold the Sy.No.144/3 measuring 0.3 guntas, Which belongs to plaintiff and another Sy.No.134/2 sold by the plaintiff and Defendant on 9.01.2007 measuring 1.03 guntas. What are the properties acquired by the plaintiff the same has been sold, the said plaintiff put his eagle eyes on the property of the defendant, the alleged application filed by the plaintiff in order to wrong full gain. **Hence dismiss the application filed by the plaintiff with cost.**

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

POINTS

1. Whether the amendment sought by the plaintiff is necessary and the same is deserves to be allowed?
2. What order?
5. Heard both sides.
6. This court has perused the materials available on record and findings of this court in the above points are as follows:-

Point No.1:-	In the Affirmative
Point No.2:-	As per final order for the following:-

REASONS

7. **Point No.1** : The plaintiff has filed this application to permit the plaintiff to amend the plaint. The plaintiff has filed this suit for partition, declaration and injunction.

8. The mentioning of mistaken description in the plaint is not intentional one, bonafide and it is curable one. She recently noticed the mistake. In order to bring clarity brought this application. If the mistake is rectified it would be help full for this court to decide the matter on the merits. In the interest of justice, it is just and necessary to allow the application.

Order VI Rule 17: Amendment of Pleadings: as reads as follows:

“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 question in controversy between parties:

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

10. If the application is not allowed. It leads to multiplicity of proceedings. Therefore, holding that amendment of plaint would not lead to grave injustice and serious prejudice to the plaintiff. Hence the Point No.1 answered in Affirmative.

11. Point No.2:- For the aforesaid discussion on the point No.1, this Court proceeds to pass the following:

ORDER

**The IA.No.III under order VI
rule 17 r/w Sec.151 of CPC filed by
the plaintiff is hereby allowed.**

**Directed to plaintiff to amend
the plaint and to furnish amended
plaint.**

(Dictated to the Typist copyist and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 11th day of September - 2023).

(Usharani B.N.)
Addl Civil Judge & J.M.F.C.,
Channapatna.

Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

The IA.No.III under order VI rule 17 r/w Sec.151 of CPC filed by the plaintiff is hereby allowed.

Directed to plaintiff to amend the plaint and to furnish amended plaint.

Call on 10.10.2023.

Addl Civil Judge & J.M.F.C.,
Channapatna.