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**IN THE COURT OF THE ADDL. SR. CIVIL JUDGE &
J.M.F.C., AT: MAGADI.**

OS.No.14/2020

Present: Sri. Hanumanth Satwik.,
LL.M,
Addl. Sr. Civil Judge & JMFC., Magadi.

DATED: THIS THE 15th DAY OF OCTOBER 2022

Plaintiff :- Smt. Channamma,
W/o. Narasimhaiah,
D/o. Late. Dase Gowda,
Aged about 58 years,
R/at: Mallohalli Village,
Kadanoor Post, Madure Hobli,
Doddaballapura Taluk,
Bangalore Rural District.

(By **Sri. G.N.A.** Advocate)

--V/s--

Defendants :- 1 Smt. Gangamma,
W/o. Kempaiah,
D/o. Late. Dase Gowda,
Aged about 65 years,
R/at: Mangipalya Village,
Sankighatta Post,
Thippasandra Hobli,
Magadi Taluk, Ramanagara District.

2. Smt. Bylamma,
W/o. Late. Ramanna,
D/o. Late. Dase Gowda,
Aged about 62 years, .
 3. Smt. Rathnamma,
W/o. Late. Krishnappa,
Aged about 50 years,
 4. Smt. Bhagya,
W/o. Late. Dayananda,
D/o. Late. Krishnappa,
Aged about 26 years,
R/at: Near Balaji Theatre,
Magadi Town, Magaid Taluk,
Ramanagara District.
 5. Smt. Jamuna,
W/o. Somashekara,
D/o. Late. Krishnappa,
Aged about 24 years,
 6. Sri. Theju,
S/o. Late. Krishnappa,
Aged about 22 years,
 7. Sri. Jayarama,
S/o. Late. Dasegowda,
Aged about 55 years,
 8. Sri. Govindaraju,
S/o. Late. Dasegowda,
Aged about 48 years,
- D2, 3, 5 to 8 are R/at:
Bettahalli Village, Srigriripura Post,
Kudur Hobli, Magadi Taluk,

Ramanagara District.

(D1 & 2 by **Sri. G.R.S.** Advocate)

(D3 to 8 by **Sri. A.S.S.** Advocate)

ORDER ON IA NO.IV

The present suit is for partition and separate possession & declaration.

2. The plaintiff filed the present application U/o. VI rule 17 of CPC seeking permission of this court to allow her to amend the plaint. The plaintiff submits that due to typographical error, the survey number of item no.5 of the suit schedule property was wrongly types as Sy.No.10. Further, during the pendency of the suit item no.2 of the suit schedule property was phoded. As such the proposed amendment is within the frame work of O.6 R.17 of C.P.C. In this regard, the plaintiff prays as above.

3. The defendants did not file objections to the application.

4. Heard counsel for plaintiff and defendant no.3 to 8.

5. Considering the contentions of the parties, following points arise for my consideration.

1. *Whether the amendment sought for is necessary to determine the real question in controversy?*
2. *What order?*

6. My findings for the above points are as under.

Point No.1: In the affirmative,

Point No.2: As per final order.

For the following,

REASONS

POINT NO.1:-

7. The plaintiff sought permission of this court to allow her to amend the plaint. In this regard, I have perused the amendment sought and I have also perused the plaint. Considering the same, I am of the view that plaintiff intends to correct typographical error and include the changes to the suit schedule property arising out of phodi. The present suit is one for partition and separate possession. Considering the

questions that need to be answered in the present suit I am of the view that incorporation of the proposed amendment is necessary so as to determine real question in controversy.

8. Be it stated, on perusal of the application it appears that in spite of due diligence the plaintiff could not have raised the matter before the commencement of the trial. So also, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of5 justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that there is no impediment to permit the plaintiff to amend the plaint.

9. On perusal of the proposed amendment it appears that the proposed amendment does not intend to bring new case, on the other hand the amendment proposes to make the suit comprehensive. The proposed amendment if brought on record the cause of action existing and the nature of the suit will remain unharmed. If the proposed amendment is allowed the nature of the suit will not be changed and the basic structure remains unharmed. Considering the questions that need to be determined in the present suit and in view of the purpose the proposed amendment intends to achieve, I am of the view that, the said amendment is necessary to be carried out to determine the real question in controversy.

10. It is to be noted that plaintiff has every right to put-forth his grievances and he is the master of his averments, this being the case if proposed amendment is not allowed to be

carried out the plaintiff cannot put-forth her case effectively and completely and bring clarity in the facts alleged. Considering this, I am of the view that, opportunity should be accorded to the plaintiff to put-forth her case in its entirety by carrying the amendment.

11. Furthermore, if the proposed amendment is not allowed to be carried out the inconvenience which may be caused to the plaintiff is more than the inconvenience, which may be caused to the defendants if the same is allowed to be carried out. Further, if amendment is not allowed the injury which may be sustained by the plaintiff cannot be compensated at any cost. On the other hand, the defendants will have an opportunity to contest the matter and get the same decided on merits.

12. Considering the pleadings, the application and the proposed amendment, I am of the view that, in the interest of justice and equity it is necessary that the proposed amendment be incorporated in the plaint so as to determine real question in controversy and to make the suit

comprehensive. In these circumstances, I decide point No.1 in the affirmative.

POINT NO.2:

13. In view of reasons on point No.1 and in the interest of justice and equity, I proceed to pass the following,

ORDER

IA No.IV U/o.VI Rule 17 r/w.

Sec.151 of CPC filed by the plaintiff is

hereby allowed on cost of Rs.100/-.

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **15th day of October, 2022.**)

(Hanumanth Satwik)
Addl. Sr. Civil Judge &
JMFC.,
Magadi.