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

OS.No.158/2019

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

DATED: THIS THE 10th DAY OF NOVEMBER 2022

PLAINTIFF : Smt. Narasamma,
W/o. Late. Marihonnaiah,
Aged about 80 years,
R/O. Tigalarapalya Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

(By Sri. S.K.V. Advocate)

V/s

DEFENDANT : Smt. Kempamma,
W/o. Late. Chikkahonnaiah,
Aged about 70 years,
R/at: Gangenahalli Village,
Tavarekere Hobli,
Bangalore South Taluk,
Bangalore Rural District.
Pin: 562 130.

(By Sri. R.S. Advocate)

ORDER ON IA NO.IV

The present suit is for declaration and permanent injunction.

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 her husband is the owner of agricultural land bearing Sy.No.189/1, measuring 4 acres 37 guntas. Her husband was in possession of the said property. After his death, she and her children are in possession of the said property. The defendant without having any rights over the property, got mutated the said property in his favour. The property sought to be inserted in the plaint is the self-acquired property of her husband. The defendant got mutated the said property in his favour. By virtue of the revenue entry, the defendant and her family members are trying to dispossess her and her family members from the said property. In this regard, the plaintiff prays as above.

3. The defendant in the objections denied the application averments. The defendant contended that the property proposed to be included is measuring 4 acres 37 guntas. This being the case, no explanation is forth coming from the plaintiff as to why she is restricting the amendment only to an extent of 28 guntas. The plaintiff or her husband was not in possession of the said property. The present application is filed to drag the proceeding. In this regard, the defendant prays to reject the application.

4. Heard counsel for the defendant. The learned counsel for the plaintiff filed written arguments. I have perused the written arguments.

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 include the property. The plaintiff alleges that the said property belongs to her husband. The defendant got illegally mutated the said property in his name. On the strength of the revenue entries, the defendant and her family members are trying to dispossess her and her family members from the said property. Be it stated, the present suit is one for declaration and permanent injunction. 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 of justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that the objections of the defendant are of no avail to her. Even otherwise the contentions of the defendant are the subject matter of evidence, which cannot be decided at this stage of the case.

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 defendant 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 defendant will have an opportunity to contest the matter and get the same decided on merits.

12. Considering the pleadings, the application, the objection 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 **10th day of November 2022.**)

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