

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

**Present:**

**Sri.Hanumanth Satwik.,** LL.M.,  
Addl. Senior Civil Judge & JMFC., Magadi.

**Dated: this the 23<sup>rd</sup> day of February 2021**

**O.S.No.210/2017**

**Plaintiffs** : 1. Sri. M.Mahadevaiah,  
S/o late Mallaveeraiah,  
Aged about 79 years,  
Presently R/at Byrasandra Village,  
Gulur Hobli, Haralur Post,  
Tumkur Taluk – 572 104.

2. Sri. C.M.Shivanna,  
S/o late Mallveeraiah,  
Aged about 74 years,  
Presently R/at Soolikere Village,  
Kengeri Hobli,  
Bangalore South Taluk – 560 060.

(By Sri. **M.R.R.**, Advocate }

V/s

**Defendants** : 1 Smt. Shivarudramma W/o Nagaraja K,  
D/o Shanthaiah,  
C/o Nanjappa,  
Aged about 50 years,  
R/at Basavanapalya, Tavarekere Hobli,  
Bengaluru South Taluk,  
Bengaluru Rural District.

2. Sri. Malleshaiah S/o late Shanthaiah,  
Aged about 47 years,  
R/at Chikkaveeraiahnapalya,  
Tavarekere Post, Bengaluru South Taluk,  
Bengaluru Rural District.
3. Sri. Dinesh Kumar S/o late Shanthaiah,  
Aged about 40 years,  
Bill Collector in Tavarekere Village Panchayath  
R/at Chikkaveeraiahnapalya,  
Tavarekere Post, Bengaluru South Taluk,  
Bengaluru Rural District.
4. Sri.Nagaraja S/o late Shanthaiah,  
Aged about 38 years,  
(Driver in BMTC, 18<sup>th</sup> Depot, Nagawara)  
R/at Chikkaveeraiahnapalya,  
Tavarekere Post, Bengaluru South Taluk,  
Bengaluru Rural District.
5. Smt. Kamamma D/o late Shanthaiah,  
W/o Amruthesh,  
Aged about 44 years,  
R/at Chikkaveeraiahnapalya,  
Tavarekere Post, Bengaluru South Taluk,  
Bengaluru Rural District.
6. Sri. T.G.Narasimhamurthy,  
S/o T.V.Gangaraju,  
Aged about 38 years,  
R/at Tavarekere Village, Hobli, Post,  
Bengaluru South Taluk,  
Bengaluru Rural District.

(Defendant No.1 to 5 By Sri. **A.S.S.**, Advocate }

**ORDER ON IA NO.VII**

The present suit is for partition and separate possession.

2. The plaintiffs have filed the present application U/o. VI rule 17 of CPC seeking permission of this court to allow them to amend the plaint. The plaintiffs submit that typical mistake has crept into the plaint while typing the names of the bajudars of the suit schedule properties. The said mistake is bonafide. In this regard the plaintiffs pray as above.

3. Defendant no.6 filed objections to the application contending that the present application is not maintainable. The plaintiffs filed suit for partition of the suit schedule properties before Hon'ble court of Prl. Civil Judge & JMFC, Magadi. The said suit was withdrawn for presentation before the proper court. In the earlier suit the plaintiffs have stated the same boundaries. The plaintiffs are trying to change the boundaries of the suit schedule properties. The reasons stated in the affidavit accompanying the application are not acceptable. The matter has been posted for evidence. As such, at this stage application is not maintainable. In this regard defendant no.6 prays to reject the application.

4. Heard arguments of the learned counsel.
5. Considering the contentions of the counsel, 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**

7. **Point no.1**:- The plaintiff has sought permission of this court to allow him to amend the plaint. In this regard I have perused the amendment sought for and I have also perused the plaint. Considering the same, it is clear that the plaintiffs intend to correct the boundaries of the suit schedule properties. As such, the plaintiffs intend to plead their case comprehensively. Be it stated, 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. Further, on perusal of the application it appears that in spite of due diligence the plaintiffs 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 thus;

***“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 contentions of defendant no.6 are of no avail to him at this stage of the trial. Even otherwise, the contentions of defendant no.6 are

the subject matter of trial, 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 proposed amendment is necessary to be carried out to determine real question in controversy.

10. It is to be noted that plaintiffs have every right to put-forth their grievances and they are the master of their averments, this being the case if proposed amendment is not allowed to be carried out the plaintiffs cannot put-forth their 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 plaintiffs to put-forth their case in its entirety by carrying out the amendment.

11. Furthermore, if the proposed amendment is not allowed to be carried out the inconvenience which may be caused to the plaintiffs 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 plaintiffs 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. In this circumstances, considering the plaint, 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.

13. **Point no.2**:- 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.VII filed U/o.VI Rule 17 R/w. Sec.151 of  
CPC filed by the plaintiffs is hereby allowed on cost  
of Rs.200/-.**

(Dictated to the stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the **23<sup>rd</sup> day of January 2021**)

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