

KARN410004852017



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

OS.No.244/2017

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

DATED: THIS THE 14th DAY OF OCTOBER 2022

PLAINTIFFS : 1. Smt. Renuka Devi,
W/o. Ramakrishnaiah,
Aged about 45 years,

2. Smt. Nishchitha H. R.,
D/o. Ramakrishnaiah,
Aged about 24 years,

3. Sri. Chikkanna H. R.,
S/o. Ramakrishnaiah,
Aged about 22 years,

All are R/at: Hoojenahalli,
Manniganahalli Post,
Kudur Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. S.G.R. Advocate)

V/s

DEFENDANT:

Sri. Ramakrishnaiah T.,
S/o. Late. Thimmegowda,
Aged about 53 years,
R/at: No.145, Raghavendranagara,
Lee Herbal Beauty Parlour,
Harishchandraghat Road,
Mysore.

(By Sri. D.H.M. Advocate)

ORDER ON IA NO.IV

The present suit is for partition and separate possession and for permanent injunction.

2. The plaintiffs filed the present application U/o. VI rule 17 of CPC seeking permission of this court to allow them to amend the plaint. Plaintiff no.3 submits that after filing of the suit the land bearing Sy.No.3/2 was subjected to phodi. As such, proposed amendment is necessary to decide the suit. In this regard, the plaintiffs pray as above.

3. The defendant in his objections denied the application averments. The defendant has contended that no valid reasons are forthcoming to allow the application. The

proposed amendment is not necessary for proper adjudication of the case. In this regard, the defendant prayed to reject the application.

4. Heard both counsel.

5. Considering the case of the plaintiff, 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:-** It is the case of the plaintiffs that after filing of the suit the land bearing Sy.No.3/2 was subjected to phodi. As such, proposed amendment is necessary to decide

the suit. Be it noted, 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 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 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 contentions raised by defendant are of no avail to him.

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 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 plaintiff to put-forth his 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 plaintiffs is more than the inconvenience, which may be caused to 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, defendant will have an opportunity to contest the matter and get the same decided on merits.

12. Considering the plaint and the application, objections 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.IV U/o.VI Rule 17 r/w.

**Sec.151 of CPC filed by the plaintiffs is
hereby allowed on cost of Rs.300/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **14th day of October, 2022.**)

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