

KARN410015182014



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

-:: PRESENT ::-
**SRI. SHIVAKUMAR R., B.A.L., LL.B.,
ADDITIONAL SENIOR CIVIL
JUDGE & ADDL. JMFC., MAGADI.**

**Dated: 16th Day of July 2025
O.S.No.628/2014**

Plaintiffs

- : 1. Smt. Veena,
D/o. Mangamma,
W/o. G. Rangaswamaiah,
Aged about 28 years,
R/at:Kulumekempalainganahalli,
Sondekoppa Post,
Kasaba Hobli,
Nelamangala Taluk,
Bangalore Rural District.
2. Smt. Manjula,
D/o. Mutturayappa,
W/o. Krishnappa,
Aged about 37 years,
R/at: Doddabyalakere Village,
Shivakote Post,
Hesaraghatta Hobli,
Bangalore North Taluk.
3. Sri. Maregowda,
S/o. Mutturayappa,
Aged about 35 years,
R/at:Kulumekempalainganahalli,
Sondekoppa Post,



Kasaba Hobli,
Nelamangala Taluk,
Bangalore Rural District.

(By Sri. H.C.R. Advocate)

V/s

Defendants

- : 1. Sri. Muniyappa,
Since dead, his L.Rs., are
already on record as D2 to 7.
2. Smt. Neelamma,
W/o. Late. Govindaraju,
Aged about 35 years,
3. Sri. Kiran,
S/o. Late. Govindaraju,
Aged about 20 years,
- D1 to 3 are R/at:
Bychaguppe Village,
Tavarekere Hobli,
Bangalore South Taluk.
4. Smt. Venkatalakshamma,
W/o. Hanumantharayappa,
Aged about 42 years,
R/at: Srinivasapura Village,
Kasaba Hobli,
Nelamangala Taluk.
5. Smt. Bhagyamma,
W/o. Manjunath,
Aged about 38 years,
R/at: Doddbyalakere Village,
Shivakote Post,



Hesaraghatta Hobli,
Bangalore.

6. Sri. Ramesh,
S/o. Muniyappa,
Aged about 36 years,
R/at: Bhudiha Village,
Kasaba Hobli, Nelamangala
Taluk,
Bangalore Rural District.

7. Sri. Venkatesh,
S/o. Muniyappa,
Aged about 32 years,

8. Sri. Venkatachala,
S/o. Muniyappa,
Aged about 32 years,

D7 & 8 are R/at:
Bychaguppe Village,
Thavarekere Hobli,
Bangalore South Taluk,
Bangalore.

9. Sri. T. G. Narasimhamurthy,
S/o. T. V. Gangaraju,
Aged about 34 years,
R/at: Thavarekere Village,
Magadi Main Road,
Thavarekere Hobli,
Bangalore South Taluk.

{ D1 to 8 by **Sri. G.P.** Advocate }
{ D9 by **Sri. N.S.S.** Advocate }



PARTIES TO I.A.NO.21

Applicant : Smt. Veena & Ors.,

Vs.

Opponent : Sri. Muniyappa & Ors.,

ORDER ON I.A.NO.21

When the matter is set down for further cross-examination of DW-1, the plaintiffs have moved this I.A.

2. The plaintiffs have filed the instant I.A., under Order VI Rule 17 r/w. Section 151 of C.P.C., and pleaded to permit them to amend the plaint as sought in the I.A.

3. The I.A., is supported with the affidavit of the plaintiff No.1. It is stated in the affidavit that, the suit schedule properties are the joint family properties of both the plaintiffs and defendants herein. But unfortunately, or by oversight the aforesaid fact has been mistakenly narrated as ancestral property instead of joint family property and further it is necessarily brought to the kind notice of this Court that the word Joint family is already on record and same is sufficient



to enlighten the nature of suit schedule properties, and further it is to be stated herein that since the present suit is filed in the nature of partition for legitimate share of the plaintiffs which claiming the share of plaintiffs through their deceased mother namely Mangamma against the defendants herein, hence the amendment by way of deletion is very much necessary for the purpose of determining the real questions in controversy between the parties to the suit. Hence, this application.

4. The copy of I.A., was served to the defendants. The defendants No.1 to 8 have filed the detailed objections and resisted the I.A., filed by the plaintiffs and interalia contended that, this application is filed after lapse of 11 years for amendment of plaint to amend as "undivided property" and ancestral property etc,. This application is hopelessly barred by law of limitation and the same is liable to be dismissed. In fact long back evidence has been adduced and the plaintiffs are in the habit of filing one after another applications for



amendment of plaint only with malafide intention to drag the proceedings. The defendants further contended that, the plaintiffs' evidence is over and the defendants have filed their affidavit and the documents are marked and some extent the cross-examination has been done at this stage, this application is not maintainable and it deserves to be dismissed. For all these grounds the defendants pray to reject the I.A., with exemplary cost.

5. The defendant No.9 has filed the memo adopting the statement of objections filed by the defendant No.1 to 8 on behalf of defendant No.9.

6. Heard arguments on both sides.

7. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.21 filed by the plaintiffs is deserves to be allowed and whether the



amendment sought by the plaintiffs is very much necessary to determine the real controversy between the parties?

2) What order?

8. My findings on the above points are as follows :

Point No.1 : In the Affirmative,

Point No.2 : As per the Order,

for the following:

REASONS

9. **POINT NO.1:** On perusal of the materials available on record, admittedly the plaintiffs have filed present suit against the defendants for the relief of partition and declaration in respect of suit schedule properties. When the matter is set down for further cross-examination of DW-1, at this stage, the plaintiffs have moved this I.A., and sought to permit them to amend the plaint as sought in the I.A.

10. It is the urge of the plaintiffs that, the suit schedule properties are the joint family properties of both plaintiffs and defendants herein, but unfortunately by oversight, the



aforesaid fact has been mistakenly narrated as ancestral property instead of joint family property and further it is necessarily brought to the kind notice of this Court that the word joint family is already on record and same is sufficient to enlighten the nature of suit schedule properties and further is is to be stated herein that since the present suit is filed in the nature of partition for legitimate share of the plaintiffs which claiming the share of plaintiffs through their deceased mother namely Mangamma against the defendants herein, hence the amendment by way of deletion is very much necessary for the purpose of determining the real questions in controversy between the parties to the suit.

11. On the other, the defendant contended that, after lapse of 11 years from the date of suit. Hence, the proposed amendment is barred by limitation and in the instant suit the trial has been commenced. Hence, the I.A., filed by the plaintiffs is not maintainable in the eye of Law.



12. At this juncture, I would like to refer Order VI Rule 17 of CPC which 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 questions in controversy between the parties:

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."

13. On perusal of the aforesaid provision, it is clear that, the parties to the suit are permitted to bring forward amendment to their pleadings at any stage of the proceedings for the purpose of determining the real questions in



controversy between them. If such application is made after commencement of the trial, in that event, the court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. In the instant suit, the matter is set down for further cross-examination of DW.1.

14. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India in the case of **Pandit Malhari Mahale Vs. Monika Pnadit Mahale and others**, reported in **(2020) 11 SC 549**, wherein the Hon'ble Apex Court held that:

"It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed."

15. In another decision rendered by the Hon'ble Apex Court of India in the case of **Rajesh Kumar Aggarwal and**



others Vs. K.K.Modi and others, the same is reported in (2006) 4 SCC 385, wherein the Hon'ble Apex Court of India held that:

"The court should allow the amendment would be necessary to determine the real question of the controversy between the parties, but the same indisputably would be subject to the condition that no prejudice is caused to the other side."

16. The another decision of Hon'ble Apex Court of India reported in **2019 SCC On-line SC 194** between **M. Revanna Vs. Anjinamma**, pleased to explained under what circumstances an application for amendment of pleadings filed after commencement of trial can be allowed. The Hon'ble Apex court of India pleased to held that,

"Though normally amendments are allowed in the pleadings to avoid the multiplicity of litigations, the court need to take consideration whether the application for the amendment is bonafide or malafide and



whether the amendment caused such prejudice to the other side which cannot be compensated in terms of money”.

17. The ratio laid down in the aforesaid decisions are aptly applicable to the present case on hand. Admittedly it is a suit for partition and separate possession in respect of suit schedule properties. The plaintiffs have sought for amendment to delete the word ancestral in the plaint pleadings. In the plaint pleading due to oversight, it has been wrongly mentioned as ancestral property instead of joint family property. It is very relevant to note that, the plaintiff has pleaded that, the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants, but the plaintiffs are claiming their share through their deceased mother namely Mangamma against the defendants. In a suit for partition, the burden of proof is always lies upon the plaintiffs to establish the case of the plaintiff. On perusal of the rival contentions of the both



parties and other materials placed on record, this court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. It is very pertinent to note that, on perusal of the materials available on record, the proposed amendment sought by the plaintiffs in the I.A., is very much necessary to determine the real question in controversy between the parties. If the proposed amendment is allowed, it will not change the nature of the suit and also cause of action. If the application is allowed, there is no harm caused to the other side. Considering all these reasons, I answer Point No.1 in the '**Affirmative**'.

18. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

I.A.No.21 filed by the plaintiffs under
Order VI Rule 17 r/w Section 151 of CPC is

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O.S.No.628/2014(Or.)

hereby allowed on payment of cost of
Rs.1,000/-.

The plaintiffs are hereby permitted to
carry out amendment and to furnish amended
plaint.

(Dictated to the Typist directly on the computer, typed
by her, corrected by me and then pronounced in the open
Court, on this the day of **16th day of July, 2025.**)

(Shivakumar R.)
Additional Senior Civil Judge & J.M.F.C.
Magadi.