

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 6TH day of October 2020

OS.No.294/2016

PLAINTIFFS : 1 Govindaiah P.H.,
S/o. late Hanumaiah,
Aged about 58 years.

2 Purushotham P.G.,
S/o Govindaiah P.H.,
Aged about 32 years.

3 Smt. Meenakshi P.G.,
D/o Govindaiah, P.H.,
Aged about 30 years.

4 Ananda Kumar P.G.,
S/o Govindaiah P.H.,
Aged about 27 years.

All are R/at
Punugu Marenahalli, Thavarekere Hobli,
Chunchaneguppe Post,
Bengaluru South Taluk,
Bengaluru Rural District.

(By Sri. G.J.P., Advocate)

V/s

the suit schedule properties. Due to the said reason khata number and extent of the property to item no.5 and 6 of the suit schedule properties is not mentioned. The plaintiffs came to know about the mistake while preparing further examination-in-chief. In this regard the plaintiffs pray as above.

3. Defendant no.3 filed objections to the application contending that the plaintiffs are not entitled for the relief sought for. Plaintiff no.1 separated from the joint family about 30 years ago. After coming to know about the same from the written statement, the present application has been filed by the plaintiffs. If this application is allowed, his defence will get damaged. The present application is filed to drag the case and cause inconvenience to him. The reasons stated in the application are false. In this regard defendant no.3 prays to reject the application.

4. Heard arguments of the counsel.

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

Order**OS No.294/2016**

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 plaintiffs sought permission of this court to allow them 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 amend the boundaries of item no.1 to 3 of the suit schedule properties and to include khata number and extent to item no.5 and 6 of the suit schedule properties. The present suit is one for partition and separate possession and to declare that the Will dated 04.11.1999 is invalid. 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. In the case at hand the defendant contended that allowing the application will damage his defence. Be it stated, even if the application is allowed, the defendant will have an opportunity to file additional written statement. As such, in view of the opportunity available to the defendant, I am of the opinion that this contention of the defendant holds no water.

9. 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 the defendant are of no avail to him at this stage of the trial.

10. 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.

11. 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 plaintiffs to put-forth their case in its entirety by carrying out the amendment.

12. 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.

13. 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.

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14. **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.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 **6th day of October 2020.**)

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