

KARN410014492014



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

OS.No.558/2014

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

DATED: THIS THE 24th DAY OF NOVEMBER 2022

Plaintiff : Smt. Manjula @ Narasamma,
First W/o. Late. Nanjundaiah,
Aged about 35 years,
R/at: Kunchigarapalya Village,
Uttarahalli Hobli,
Bangalore South Taluk,
Bangalore – 560 082.

(By Sri. **S.L.** Advocate)

---V/s---

Defendants : 1. Smt. Nagamma,
2nd W/o. Nanjundaiah,
Aged about 33 years,

2. Master Krishna,
S/o. Late. Nanjundaiah,
Aged about 14 years,

3. Master Naveen,

S/o. Late. Nanjundaiah,
Aged about 12 years,

D2 & 3 are since minor
represented by their natural
guardian and mother
Smt. Nagamma - 1st defendant.

4. Smt. Galamma,
W/o. Late. Muthaiah,
Aged about 80 years,
5. Smt. Nanjamma,
W/o. Hanumanarasappa,
D/o. Late. Muthaiah,
Aged about 42 years,

D1 to 5 are R/at:
Mayasandra Village,
Tavarekere Hobli,
Bangalore South Taluk.

6. C. Revanasiddaiah,
S/o. Channigaiah,
Aged about 53 years,
R/at: Dodderi Village,
Tavarekere Hobli,
Bangalore South Taluk.

(D1 to 5 by **Sri. B.V.K.** Advocate)
(D6 **Exparte**)

ORDER ON IA NO.IX

The present suit is for partition and separate possession.

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 due to oversight and typographical mistake, there are mistakes in the description of the suit schedule properties. Further, defendant no.1 to 5 colluding with defendant no.6, created sale deed dated: 11.06.2012 with respect to item no.3 & 5 of the suit schedule properties and sale agreement has been created with respect to portion of item no.1 and 4 of the suit schedule properties. While preparing her evidence, she came to know about the aforesaid facts. The proposed amendment is necessary for adjudication of the suit. In this regard, the plaintiff prays as above.

3. Defendant no.1 to 5 in their objections denied the application averments. The defendants contended that proposed amendment is barred by Law of Limitation. The alleged transaction took place before the institution of the suit. If the plaintiff is the member of the joint family, no explanation is forthcoming from her as to why she did not raised her

grievance at the earliest. The plaintiff is a stranger to their family. In this regard, defendant no.1 to 5 pray to reject the application.

4. Heard counsel.

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 has 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 correct the description of the suit schedule properties and include additional facts. 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 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 defendants are of no avail to them. Even otherwise the contentions of the defendants 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 make the suit comprehensive. 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 defendants 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 defendants 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.IX 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 **24th day of November 2022.**)

(Hanumanth Satwik)

**Addl. Sr. Civil Judge &
JMFC.,
Magadi.**