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

OS.No.982/2014

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

DATED: THIS THE 1st DAY OF SEPTEMBER 2021

PLAINTIFFS:

1. Sri. Mara Arasaiah,
S/o. Late. Hanumanthaiah,
Aged about 57 years,
R/at. Jattipalya Village,
Tavarekere hobli,
Bangalore South Taluk.
2. Smt. Lakshamma,
W/o. Late. Channigappa,
D/o. Late. Hanumanthaiah,
Aged about 55 years,
R/at: Kachanahalli,
Budihal Post, Kasab Hobli,
Nelamangala Taluk.

(By Sri. R.S. Advocate)

V/s

DEFENDANTS:

1. Sri. Muninarasaiah,
S/o. Late. Chikkarasappa,
Aged about 49 years,
2. Sri. Muniramaiah,
S/o. Late. Chikkarasappa,
Aged about 45 years,

3. Smt. Nagamma,
W/o. Late. Chikkarasappa,
Aged about 58 years,
4. Sri. Ramaiah,
S/o. Late. Chikkarasappa,
Aged about 38 years,
5. Smt. Hanumakka,
D/o. Late. Chikkarasappa,
W/o. Siddappa,
Aged about 35 years,
6. Sri. Lakshmana,
S/o. Chikkarasappa,
Aged about 33 years,
7. Sri. Hanumanthaiah,
S/o. Chikkarasappa,
Aged about 32 years,

D1 to 7 are R/at:
Jattipalya, Kadabagere Post,
Tavarekere Hobli,
Bangalore South Taluk.

8. Smt. Manjula,
W/o. Devaraj,
D/o. Late. Chikkarasappa,
Aged about 31 years
R/at: Hosakere Beedi,
Tavarekere Village & Hobli,
Bangalore South Taluk.

(D3 by Sri. D.H.M. Advocate)

ORDER ON IA NO.IX

The present suit is for partition and separate possession. The plaintiffs further pray to declare the registered Will dated: 18.11.2003 and 09.10.2003 as not binding on them.

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. The plaintiffs submit that due to oversight and typographical mistake the names of defendant no.5 and 8 has been wrongly typed. In this regard the plaintiffs pray as above.

3. Defendant no.3 did not file objections to the application.

4. Heard arguments of plaintiffs and defendant no.3.

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

POINT NO.1:-

7. The plaintiffs have sought permission of this court to allow them 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 plaintiffs intend to correct the names of defendant no.5 and 8. The present suit is one for partition and separate possession and for declaration. 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 of4 justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that there is no impediment to allow the application.

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 plaintiffs to put-forth their 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 no.3 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 no.3 will have an opportunity to contest the matter and get the same decided on merits.

12. Considering the Written Statement, 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 plaintiffs 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 **1st day of September 2021.**)

(Hanumanth Satwik)

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

