

KASM500012912022



**IN THE COURT OF THE ADDL., CIVIL JUDGE &
JMFC, AT SHIKARIPURA**

PRESENT:

Sri. Avinash M Ghali BA,LLB
II Addl CJ and JMFC- Shikaripura

Dated this the 05th day of January 2023

OS.No.114/2022

PLAINTIFF:

Sri. Rangappa S/o Erappa Hombaladavar,
Aged about: 65 years,
R/o Hosur village,
Shikaripura Taluk.

(By Shri. PJV., Advocate)

-VS-

DEFENDANTS:

1. Sri.Rudrappa S/o Rangapa Hatti,
Aged about 70 years,
2. Sri.Jagadish S/o Rangapa Hatti,
Aged about 50 years,
3. Smt.Gutyamma S/o Rangapa Hatti,
Aged about 65 years,
All R/o Hosur village,
Shikaripura T Taluk,
Shivamogga District.

(By Shri. GNS, Advocate)

PARTIES TO IA.NO.III

1. Sri.Rudrappa S/o Rangapa Hatti,

...APPLICANT/PLAINTIFFS

V/S

Sri. Rangappa S/o Erappa Hombaladavar,

...OPPONENT/DEFENDANTS

ORDERS ON I.A. NO.III

1. The present application is filed by defendant No.1 under order VI rule 17 R/w Sec., 151 of CPC with prayer to permit him to amend the written statement as per proposed amendment.

2. In the affidavit annexed with this application, it is stated by defendant No.1 that, due to mistake of the typist, the facts of the proposed amendment is typed and facts of proposed amendment is necessary to prove his case. If application is not allowed then he will put great trouble and hardship and if application is allowed nothing would happen to the other side. Hence prayed to allow the application.

3. On the other side the plaintiff filed objection by objecting the present application by contending that the present application is not maintainable either in law or in facts. Further contended that the defendant can not amend the written statement as defence has been already taken and alleged amendment is not at all crucial one and only to drag on the matter, the present application filed. If application is allowed great hardship and inconvenience will be caused to plaintiff. With all this contention prayed to reject the application.

4. Heard both counsel for defendants and plaintiff and Perused the materials on record.

5. The following points that would arise for consideration :

1. Whether the proposed amendment is necessary to adjudication the rights of parties?

2. What order?

6. The answer to the above point 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 present suit is filed for the relief of permanent injunction with respect to agricultural land Sy.No.78/6 measuring 6 gunta, situated at Hosur village, Shikaripura Taluk. It is to be noted that under the present application, defendant no.1 intended to amend the written statement with respect to how the Sy.No.78 has devolved and also he is intended to introduce facts with respect to partition and division of the said Sy.No.78. Further defendant no.1 intended to introduce the facts with respect to sale of partition in Sy.No.78 and also claiming that the suit schedule property is not at all existed.

8. It is to be noted that the proposed amendment if permitted to amend the written statement then burden is on the defendant no.1 and further plaintiff has right to cross examine the defendant no.1 during course of evidence. Furthermore the intended amendment neither changes the nature of suit nor changes the cause of action of the suit of plaintiff. Further it is significant to

note that, the burden is on the defendant no.1 to prove the facts of the proposed amendment and burden is not on the plaintiff. Moreover the proposed amendment is necessary to adjudicate the rights of the plaintiff and defendant no.1. Thus this court of is opinion that the defendant no.1 has to be permitted to amend the written statement by imposing cost in order to compensate to the plaintiff. Hence in view of aforesaid discussion this court answered Point No.1 **in the Affirmative.**

9. POINT NO.2: For the foregoing discussion and findings on Point No.1, this court proceeds to pass the following;`

ORDER

IA No.III filed by the Defendants No.1 under oder VI rule 17 R/w sec. 151 of CPC is hereby allowed on cost of Rs.200/-.

The defendant no.1 is permitted to amend the written statement as per proposed amendment.

The cost has to be paid to plaintiff.

For carrying amendment and furnishing
the amended written statement and re-
joinder of plaintiff if any.

Cal on 09-01-2023

(Dictated to the Stenographer transcribed by him, corrected by
me and then pronounced in the open court on this the 05th day of
January 2023)

(Avinash M Ghali)
II Addl Civil Judge and JMFC.,
Shikaripura

(Order pronounced in the open Court.
vide separate Order passed)

ORDER

IA No.XXIV filed by the plaintiffs under
order VI rule 17 R/w sec., 151 of CPC is
hereby Rejected.

**C/C I Addl Civil Judge and JMFC.,
Shikaripura**

The counsel for plaintiff has filed memo
by stating that the defendant no.1 died on
22-08-2022 and legal heirs of defendant no.1
are on record as plaintiffs and remaining
defendants. Thus for amending cause title
and furnishing cause title.

Call on 09-12-2022

**C/C I Addl Civil Judge and
JMFC., Shikaripura**