



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE &
JMFC, GUBBI.**

PRESENT

SMT. POORNIMA K. YADAV, B.A.LL.B., LL.M.,

Addl. Sr. Civil Judge & JMFC, Gubbi.

Dated on this the 25th day of July, 2023

ORIGINAL SUIT NO. 18/2017

Plaintiff/s : Narasimhamurthy and Others
(By Sri. D.G.Adv.)

Vs.

Defendant/s : Uma and Others
(D1 & 7 by Sri. L.T.G.Adv.),
(D3(b) by Sri S.R.R. Adv.),
(D3(a)&(c) Exparte)

PARTIES TO I.A.NO.XII

Applicant/plaintiff : Jayaramaiah

Vs.

Opponent/defendant : Uma and Others

: ORDERS ON I.A.NO.XII:

When the matter was pending for further cross-examination of DW1, the plaintiff filed the present application.



2. The applicant/plaintiffs through their counsel filed this application Under Order 6 Rule 17 R/w Section 151 of CPC seeking for amendment of plaint as under:

PROPOSED AMENDMENT

- “1. Item No.1. West side “Nala” need to be deleted by adding “Rayagaluwe”*
- 2. Item No.2 “Sy.No. 301” need to be deleted by adding “Sy.No. 3/1”*
- 3. Item No.2 East side “Govindappa @ Renend Govindappa” need to be deleted by adding “Govindappa @ Remand Govindappa”*
- 4. Item No.3 south side “Chanel” need to be deleted by adding “Rayagaluwe”*
- 5. Item No.6 south side “Chanel” need to be deleted by adding “Rayagaluwe”*
- 6. Item No.5 south side “Chanel” need to be deleted by adding “Rayagaluwe”*
- 7. Item No.6 west side “Thorehalla” need to be deleted by adding “Kodihalla”*
- 8. Item No.7 afterwork Sy.No. 61 “measuring 4 acre 8 guntas” need to be deleted by adding “measuring 2 acre 15 guntas” and in Item No.7 of plaint schedule “East by land of*



Devaraju and Honnamma” need to be deleted by adding “East by Road and land of Devaraju” and Honnamma” and in Item No.7 of plaint Schedule “west by road” need to be deleted by adding “west by Venkatalakshamma” and in item No.7 of plaint schedule “south by Narayuanappa” need to be deleted “south by Narasimhaiah and Narasegowda and Narayanappa’s land”

- 9. Item No. 8 East by “Chanel” need to be deleted by adding “Rayagaluve” and in the same pare North by Channel need to be deleted by adding North by Small channel and Honnapa’s land.*
- 10. Item NO.9 south by “Chenel” need to be deleted by adding “Rayagaluve”*
- 11. Item No. 10 south by “Chanel” need to be deleted by adding “Rayagaluve”*
- 12. Item NO. 11 East by “Chanel” need to be deleted by adding “Rayagaluve”*
- 13. Item No. 12 “Sy No. 13/1 measuring 0.18.00 guntas and same is bounded” need to be deleted by adding “Sy. No. 13/1*



*measuring 0.18.00 guntas and Sy.No. 13/2
totally measuring 02.05.00 guntas and
same are bounded”*

*14. Item No. 13 North by “Chanel” need to be
deleted by adding “Small channel and Land
of Honnappa”.*

- 3.** The application is accompanied with the affidavit of the plaintiff No.3 wherein it is stated that when the suit was filed, the plaintiff No.1 was suffering from paralysis stroke and recently the plaintiffs took NOC Vakalath from their previous counsel and while giving instructions, it was found that there are mistakes in the plaint which are contrary to the real facts and same are typographical error and not intentional. The said mistake needs to be rectified by way of amendment. Hence, sought to allow the application.
- 4.** On the other hand, the counsel for the defendants filed objections and contended that the application is not maintainable and it is liable to be rejected. It is



contended that the present application will change the entire nature of suit and the proposed amendments are irrelevant for the adjudication of the matter in controversy. The affidavit accompanying the application is false and it is settled principles of law that no amendment shall be allowed after commencement of trial. Hence, sought to reject the application.

5. Heard the counsel for the plaintiffs and the defendants.
6. Upon hearing both the counsel and on perusal of the materials available on record, the points that arise for my consideration is;

***Whether the amendment sought for
is necessary for proper adjudication
of the matter in dispute?***

7. My findings to the above point is in the “**Affirmative**” for the following ;

REASONS

8. Admittedly, the plaintiffs have filed this suit seeking relief of partition and separate possession of their half



share over the suit schedule Item No. 1 to 13 properties.

The materials on record disclose that the defendants have filed their written statements and issues are framed and the evidence of plaintiff is closed and the defendant has led in evidence.

- 9.** The plaintiffs intend to amend the plaint to the effect pertaining to description of Item No. 1 to 13 properties. The plaintiffs by way of proposed amendment intend to describe the suit schedule properties boundaries.
- 10.** The said application is objected by the defendants on the ground that the proposed amendments will change the nature of suit and it cannot be allowed as it is after commencement of trial.
- 11.** In the said background it is necessary to examine the provisions of Order 6 Rule 17 of CPC which provides for amendment of plaint which is necessary for purpose of determining the real questions in controversy between the parties. The proviso does not allow amendment after



commencement of trial unless shown that inspite of due diligence the party could not have raised the matter before the commencement of trial.

- 12.** This court being the trial Court must give opportunity to both the parties with an intention that the real dispute between the parties is resolved. Further, this is a suit for partition. Though the proposed amendment is sought for after commencement of trial, relates to the suit schedule properties boundaries and it is relating to the subject matter of the suit. If the boundaries of the properties are not corrected during trial and in the circumstances of the suit being decreed, there will be no end to litigation if the properties are not in existence as described in the suit schedule. If the plaintiffs are not given an opportunity to plead the facts relating to the properties, it will take away their very right of establishing their case before the court. The contention taken up by the defendants can always be considered at the time of trial. At this instance, if the application is



not allowed, it will deprive the rights of the plaintiffs in putting forth their case which will cause injustice. Hence, this court is of the opinion that the proposed amendment is necessary for adjudication of the real controversy between the parties. However, the delay in filing the application is compensated by imposing cost. Accordingly, I proceed to pass the following :

ORDER

***I.A. No.XII filed by the
plaintiffs under Order 6 Rule 17
R/w Section 151 of CPC is hereby
Allowed with cost of Rs. 2,000/-.***

***Plaintiff counsel shall carry
out necessary amendment and
file amended plaint.***

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **26th day of July, 2023**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi