

KATK310011452016



IN THE COURT OF PRL.,CIVIL JUDGE AND JMFC., GUBBI

Present : Smt.Vinutha.D.S., B.Sc.(Seri), LL.B.,
Prl. Civil Judge & JMFC., Gubbi.

Dated 4th day of June 2024

O.S. No.253/2016

Plaintiff: Doddamma W/o Kadaiah,
aged about 65 years,
r/o Chelur, Gubbi taluk.

(By Sri.C.R.B., Advocate)

VS/-

Defendants: 1. Bettappa S/o Shivananjaiah,
aged about 65 years,
r/o Kachenahally,
Chelur hobli, Gubbi taluk.

2. Rangappa S/o Shivananjaiah,
aged about 62 years.

3. Chikkasiddaiah S/o Shivananjaiah,
aged about 60 years.

4. Sharadamma D/o Shivananjaiah,
aged about 55 years.

5. Thimmaiah S/o Shivananjaiah,
aged about 40 years.



6. Chikkamma W/o Shivananjaiah,
aged about 85 years.
Defendant No.2 to 6 are
r/o Chelur, Gubbi taluk.
7. Thirumalaiah S/o Thimmaiah,
aged about 75 years,
r/o Kachenahally,
Chelur hobli, Gubbi taluk.

(D.1 to 7 -exparte)

ORDER ON I. A. No.4

Applicant : C.K.Nagappa
(SPA holder of plaintiff)

VS/-

Opponents: Bettappa & others

ORDERS ON IA.No.4

SPA holder of plaintiff has filed this I.A.No.4 U/O 6 R 17 of CPC praying to permit him to amend the plaint by way of inserting para 6 in line No.1 and 3.



The Proposed Amendment is as follows:

- 3) In page No.3 para No.6 in the line No.1 the after the word year “1992” to be amended as “15.10.1991”**
- 4) In page No.3 para No.6 in the line No.3 the after the word year “partition” “under the panchayath parikath” to be added.**

2. In the affidavit the SPA holder of the plaintiff has stated that plaintiff is his mother and she has filed this suit for declaration of title and permanent injunction in respect of the suit schedule property. It is stated by the applicant that the suit schedule property was given by plaintiff's father by effecting partition of his properties between plaintiff and her sister Siddamma. It is further stated that due to inadvertence, his mother has not pleaded the date of partition in the plaint. Therefore, it is necessary to add the same by way of amendment. It is also stated that the proposed amendment does not change the nature of suit nor introduce new cause of action and no prejudice would be caused to the defendant. He has also stated that he has been diligent in conducting the suit and prays to allow the application.



3. Per contra the defendant seriously objected the application on the grounds that in the plaint para 6, the plaintiff has averred that daughters of Kariyappa namely Dodamma (plaintiff) and Siddamma have effected the partition between themselves in the year 1992, but the mode of partition was not stated in the plaint. Now, by way of amendment, the plaintiff is trying to introduce new fact as such **“the properties were partitioned under panchayath parikath”** dated:15.10.1991. They also stated and argued that in the cross-examination the PW.1 has admitted that the partition took place in the year 1992. Therefore, if the proposed amendments are allowed, it will prejudice the defendants and therefore, they pray to reject the application.

Further the defendants also contended that the application is highly belated i.e., after lapse of 8 years the plaintiff is seeking the above amendment. All on above grounds the defendants have sought for rejection of the application.

4. Heard. Perused the materials on record, the application and objection filed.

5. The only one point that arise for my consideration is:

Point No.1 : Whether the application filed by
applicant/SPA holder of plaintiff



under Order 6 R 17 of CPC deserves to be allowed?

Point No.2 : What Order?

6. My answer to the above points is as under :

Point No.1	In the Negative
Point No.2	As per the final order for the following

REASONS

7. Point No.1:- At the out set this suit is filed by the plaintiff for the relief of declaration of plaintiff's title over the suit schedule property and recovery of possession. The application is filed when the matter is slated for further cross-examination of PW.1. I have meticulously gone through the pleadings and the proposed amendment. In brief, the plaintiff in the plaint has pleaded that the land bearing Sy.No.200/1 totally measuring 3 acres 29 guntas belonged to the joint family of Nanjappa. After the death of Siddananjaiah S/o Nanjappa, his wife Narayanamma sold about 1 acre 10 guntas out of the above said property to her brother Kariyappa i.e. the father of plaintiff under the registered sale deed dated:8.05.1971 which is the suit schedule property. Further,



at para 6 of the plaint it is specifically pleaded as below:

“ In the year 1992 the said Kariyappa had given the above said properties and other properties belong to him to his daughters namely Doddamma and Siddamma by effecting partition.”

In the contrary, the defendants in their written statement have denied the entire plaint averments and have taken the specific contention that Sy.No.200/1 measuring 3 acres 29 guntas belongs to defendants and it is their ancestral and joint family property. It is also their contention that Narayanamma by playing fraud had created and concocted the certain title deeds in her name.

Therefore, from the pleadings on record fortifies that there is dispute with respect to the title and possession over the suit schedule property. That apart during the cross-examination of PW.1 dated:24.01.2024 to the suggestion of defendant counsel, PW1 has deposed as below:

“ ನಿ.ಪಿ. 6 ರಲ್ಲಿ ಸಿದ್ಧವು ಹಾಗೂ ದೊಡ್ಡವು ವಿಭಾಗ ಪತ್ರ ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ ಎಂದು ಬರೆದಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಸಿದ್ಧವು ಹಾಗೂ ದೊಡ್ಡವು ವಿಭಾಗ ಪತ್ರ ಮಾಡಿಕೊಂಡಿದ್ದರು ಎನ್ನುತ್ತಾರೆ. 1992 ರಲ್ಲಿ ಸಿದ್ಧವು ಹಾಗೂ ದೊಡ್ಡವು ವಿಭಾಗ



ಮಾಡಿಕೊಂಡಿದ್ದರು.”

8. Therefore, from the above portion of the evidence on record it fortifies that the PW.1 has admitted that the partition had took place in the year 1992 between his mother Doddamma and her sister Siddamma. At this movement, it is very pertinent to quote the recent decision of the Hon'ble Apex court in Civil A.No.2886/2012 dated:29.12.2024 between Basavaraj V/s Indira & others wherein the Division Bench of the Hon'ble Supreme Court at para 9 and 11 have observed as under and has enumerated the facts to be considered while deciding an application U/Or.6 Rule 17 of CPC:

9. This Court in **M. Revanna v. Anjanamma (Dead) by legal representatives and others** 11 opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order VI Rule 17 C.P.C. prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No. 7 thereof is extracted below:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character



of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

11. This Court in **Revajettu’s** case (supra) enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.

9. Keeping the above principles in mind and applying the same to the case on hand, as narrated and discussed above on careful perusal of the amendment sought shows that if the



amendment is permitted, it will take away the admission given by the PW.1 during his cross-examination. The proposed amendment causes prejudice to the defendants. Moreover, the applicant nowhere in his application has pleaded about due diligence as to why he had not pleaded the said fact either at the time of institution of the suit or even before framing of issues. Only mere saying that he is due diligent in conducting the suit and that he came to know the said mistake of non pleading it only while preparing for further cross-examination cannot be considered. Because the proposed amendment apparently appears to cause prejudice to the defendants and introduce new fact and takes away the admission given by the PW.1. Any right accrued to opposite party cannot be taken away on the account of delay in filing the application. Hence, the plaintiff has not made out good grounds for allowing the application. Therefore, I answer the Point No.1 in the **Negative**.

10. Point No.2: As per above discussion, following order is passed.



ORDER

I A No.4 filed U/O 6 R 17 of CPC by the applicant is hereby rejected on cost of Rs.500/-.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in the Open Court on this 4th day of June, 2024).

**(Smt.Vinutha.D.S)
Prl.Civil Judge and JMFC,
Gubbi.**



**(Order pronounced in the open Court
vide separate order)**

ORDER

**I A No.4 filed U/O 6 R 17 of CPC
by the applicant is hereby rejected
on cost of Rs.500/-.**

**Prl.Civil Judge and JMFC,
Gubbi.**