

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 26th day of March -2024

O.S. No.395/2020

Plaintiff: Bharathi.T D/o late Thimmaiah,
w/o Nagesh, aged about 27 years,
Formerly R/o Karekurihatti Majire,
N.Mathighatta Village,
Nittur Hobli, Gubbi Taluk,
Now R/o Bidare Village at post,
Chelur Hobli, Gubbi Taluk.

(By Sri.K.S.M., Advocate)

VS/-

- Defendants: 1.** Mayamma W/o late Thimmaiah,
Aged about 59 years,
R/o Karekurihatti Majire,
N.Mathighatta Village,
Nittur Hobli, Gubbi Taluk,
- 2.** K.T.Narasimhamurthy
S/o late Thimmaiah,
Aged about 40 years,
- 3.** K.T.Honnamma D/o late Thimmaiah,
W/o Kumaraiah, Aged about 38 years,
R/o Shivalihngaihna Palya,
Kibbanahalli Hobli, Tiptur Taluk,
Tumkur District.
- 4.** K.T.Siddaramaiah S/o late Thimmaiah,
Aged about 35 years,

D.2 & 4 R/o Karekurihatti Majire,
N.Mathighatta Village,
Nittur Hobli, Gubbi Taluk,

(D.1 by Sri.K.K.S., Advocate)
(D.2 & 4 by Sri.C.R.B., Advocate)
(D.3 Exparte)

ORDER ON I. A. No.3

Applicant/plaintiff : Bharathi.T

VS/-

Opponents/defendants: Mayamma and others

ORDERS ON IA.No.3

plaintiff has filed the application U/O 6 R 17 of CPC
praying to amend the plaint as proposed below;

The Proposed Amendment is as below :

After para No.5 amendment sought for:

4.(a). It is further submitted that after filing of written statement by the defendants No.2 and 4, the plaintiff came to know that the father of the plaintiff and husband of defendant No.1 and defendants No.2 and 4 late Thimmaiah has executed the registered will dated:07.12.2010. Further, it is submitted that in that will he has not allotted any share to the plaintiff even though she is having legitimate share in the suit schedule properties, because the suit schedule properties are the ancestral properties of the plaintiff and defendants. There is no locus standi to execute the will for

late Thimmaiah and further the averments which are pleaded in the will are giving so much rumours of doubt, that the will is executed on 07.12.2010 and that executant Thimmaiah has expired on 09.12.2010. Hence, the above will which is executed by late Thimmaiah cannot waive off the legitimate right of the plaintiff.

Further in the prayer column after b. prayer insert c. prayer as: c. To cancel the registered will dated:07.12.2010. Executed by late Thimmaiah S/o late Dasappa.

Further in the prayer column amend c. as d.

2. In the affidavit accompanying the application, plaintiff stated that, after filing of written statement by defendants No.2 and 4 she came to know that her father late Thimmaiah has executed registered WILL dated:07.12.2010 and he has not allotted any share to plaintiff. The plaintiff is also entitle for share in suit schedule property. Hence, the alleged WILL cannot wave off her share in suit schedule properties. She stated that proposed amendment is necessary for total adjudication of matter and no hardship will be caused to other side. The plaintiff filed copy of registered WILL dated:07.12.2010 along with application.

3. Per contra, the defendants No.2 and 4 have resisted the application by filing their objection and they admitted that, late Thimmaiah has executed registered WILL dated:07.12.2010 bequeathing suit schedule properties. The defendants No.2 and 4 denied the fact that the plaintiff is having share in the suit

schedule properties. They contended it is false to say that late Thimmaiah had no right to execute WILL in respect of suit schedule property. Further, the defendants objected the application on ground that it is filed to drag on the proceedings.

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/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 Affirmative
Point No.2	As per the final order for the following

REASONS

7. **Point No.1:-** At the out set, this is suit for partition and separate possession. This application is filed when matter is posted for cross of PW.1. By way of amendment, the plaintiff wants to insert proposed para 5(a) i.e., additional facts stating that after filing of written statement by defendants No.2 and 4, she came to know that her father late Thimmaiah has executed registered Will dated:07.12.2010 in respect of suit schedule properties and that she is not allotted any share in suit

schedule property and so the said WILL is not take away her rights in the suit schedule properties. She is also seeking for cancellation of alleged WILL.

On other hand, the defendants No.2 and 4 in their objection though admitted the execution of WILL dated:07.12.2010 by their father late Thimmaiah but they contended that plaintiff has no share in suit schedule property. The only objection raised is that amendment application is highly belated. At this point it is very profitable to state that, the Court while dealing with an application U/O.6 Rule 17 of CPC should not go into the merits of the amendments sought. The only points to be considered are whether the proposed amendment change the nature of the suit; whether they introduce new cause of action; whether the proposed amendment take away any admissions and whether the proposed amendments caused any prejudice to the other side. After considering the materials on record and analyzing the amendment sought, this Court feels proposed amendment does not change nature of the suit. The fact of registered Will dated:07.12.2010 is admitted by defendants No.2 and 4. Therefore, for the total adjudication of lis, it is necessary to allow the application. Hence, I answer the Point No.1 **In the Affirmative.**

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

ORDER

I A No.3 filed U/O 6 R 17 of CPC by the applicant/plaintiff is hereby allowed on cost of Rs.500/-.

For amendment of plaint and amended plaint.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in the Open Court on this 26th day of March, 2024).

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

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

ORDER

**I A No.3 filed U/O 6 R 17 of CPC by
the applicant/plaintiff is hereby
allowed on cost of Rs.500/-.**

**For amendment of plaint and
amended plaint.**

Call on 20.06.2024.

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

Before discussing further I like to rely on the recent decision of our the Hon'ble Apex Court in case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited** wherein the hon'ble Apex Court has clearly mentioned the points to be considered while allowing the application for amendment of pleadings. In the said decision at para at para 70(ii) (iii) (iv) it is held as below;

70 (ii) All amendments are to be allowed which are necessary for determining the real question in a controversy provided it does not cause injustice or prejudice to the other side. This is mandatory as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided.

a) the amendment does not result in injustice to the other side,

b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim., resulting in divesting of the

other side of a valuable accrued right (in certain situations).

Applying the same principle to the case on hand, this Court feels that, the proposed amendments 1 and 2 sought by the defendants appears to be seeking to withdraw the clear admission made by the defendant NO.1 with respect to the existence of house property in the suit schedule property and also the admission of possession of plaintiff and his family members in the suit schedule property. This very admission of the defendant NO.1 in her written statement if allowed to be deleted then it will certainly take away the right conferred on the other side and also result in injustice to the other side i.e., the plaintiff for the plaintiff in this case. Further, the proposed amendment 3 and 4 if deleted in the written statement does not cause any hardship to the plaintiff nor it amounts to taking any admissions therefore, with the above observation this Court is of the opinion that the proposed amendment at Sl.1 and 2 sought by the defendant NO.1 deserves to be rejected. The proposed amendment sl.No.3 and 4 deserves to be allowed. However, in convenience caused to the plaintiff may be compensated by the cost.P.1 partly in the A.

partly alloed .

cost 800/-

for amenmdne o W/s amended 5/2024.