



**IN THE COURT OF PRL CIVIL JUDGE AND JMFC.,
KUNIGAL**

Present:

Smt Sujatha A.B., B.A.L., L.L.B.,

Prl Civil Judge & JMFC., Kunigal.

Dated this the 14th day of October, 2024

O.S.No.321/2010

Plaintiff : Huchamma and another

V/s

Defendant :Gangamma and another

I.	Provision under which the application is filed	Under Order 6 Rule 17 of CPC
II.	Relief sought for	For amendment of plaint
III.	The date on which the application is filed	02.09.2024
IV.	Number of the application	8
V.	The date on which the objections are filed by	17.09.2024
VI.	The date on which the order were passed on the said application	14.10.2024



I.A.No.8

Applicant: Huchamma and another

V/s

Opponent: Gangamma and another

ORDERS ON APPLICATION (IA NO.8) FILED BY
THE PLAINTIFFS U/O. VI RULE 17 OF CPC.,

This application is filed by the plaintiffs U/o.VI Rule 17 of CPC praying this court to permit them to include proposed item No.16 property as prayed in the application.

2. In the affidavit annexed to the application, the plaintiff No.2 has stated that they have filed the present suit for the relief of partition and separate possession in respect of the suit schedule properties and they are illiterate and innocents, by over sight they could not inserted the proposed property in the original suit, in spite of due diligence soon after came to their knowledge about the said property left out in the schedule while addressing



arguments on merits in the regular appeal. In this regard they have filed an application u/o 6 Rule 17 of CPC. In pursuance of the same, the Hon'ble Senior Civil Judge Court, Kunigal in RA.No.30/16 has allowed the said application along with regular appeal filed by them by directing this court to record evidence only regard to insertion as per suit item No.16. The plaintiffs contended that they are also entitled for share in the proposed property and proposed amendment is just and necessary to adjudicate the matter effectively. If the application is not allowed the plaintiffs would be put to irreparable loss and injury. Accordingly, prayed to allow the application.

3. The defendant No.2 has filed objections to the application and contended that applicant wants to insert the new suit schedule property which is not permissible under law and adding some more items of the property



which is barred by limitation and the plaintiff very well aware of the fact of existence of family properties and that too the suit is filed in the year 2010 and all along court proceedings continued and delay and laches is also a ground to reject the application for amendment and the application is aimed to fishing out things and to introduce in consistence plea to make wrongful gain. So it is not only prejudice the defendants but the entire suit subject matter will change and an amendment sought to be introduced to take away the right accrued to the defendants and application is highly belated and hopelessly barred by limitation. As per amended CPC the doors of amendment are closed, once the issues are framed and evidence is recorded, after several dates plaintiff thought of filing this application just to protract the proceedings further. Hence prayed to dismiss the application.



4. Heard arguments and perused the records.
5. The following points would arise for the determination:

1. Whether the present application as sought by the plaintiff is just and necessary for the proper adjudication of the matter involved in the suit?

2. What order?

6. The findings on the above said points are under:

Point No.1 : *In the Affirmative*

Point No.2 : As per final order, for the following;

REASONS

7. **Point No.1 :-** Plaintiffs have filed the present suit for the relief of partition and separate possession in respect of suit schedule properties. It is the claim of the plaintiffs that proposed item No.16 property is also belonging to their family and same was not inserted due to



oversight. It is observed that initially the present suit was decided on merits and same was dismissed by holding that all properties of the joint family was not included. Thereafter aggrieved by judgment and decree passed by this court the plaintiff has preferred regular appeal NO.30/16 before Hon'ble Addl., Senior Civil Judge and JMFC., and in the same the present plaintiffs have filed application for amendment of plaint and same was allowed and Hon'ble appellate court has set aside the judgment passed by this court and directed this court to record evidence only with regard to insertion of item No.16 is concerned by providing opportunity to both the parties. So on perusal of the same the plaintiff has filed above application and same is formal in nature.

8. It is the settled principle that in a suit for partition and separate possession, the plaintiffs shall include all the



joint family properties and all the joint family members. In WP No.55337/2018 dated 13-06-2022 the Hon'ble High Court of Karnataka has held that the amendments are to be liberally allowed relating to the parties to substantiate their claims even in respect of proposed amendment.

9. But this court is of the opinion that the proposed amendment is very much necessary in the interest of justice and to determine the real crux of the issue. Further it would avoid the multiplicity of proceedings. But if the application is not allowed, the plaintiffs would be put to irreparable loss and injuries. On the other hand the delay in filing the application could be compensated by imposing costs on the plaintiffs. The proposed amendment neither changes the cause of action nor changes the nature of the suit. In view of the above reasons, this court inclined to allow the application. Accordingly point No.1 is answered in



the ***Affirmative.***

10. Point No.2:- For the above discussed reasons,
this Court proceeds to pass the following;

ORDER

The IA.No.VIII filed by the
plaintiffs U/o.VI Rule 17 of CPC is
hereby allowed on costs of Rs.1,000/-.

The plaintiffs are permitted to
amend the plaint as sought in the
application.

To carry out amendment and to
file amended plaint.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter
pronounced in the open court on this the 14th day of October, 2024]

(Sujatha A.B.)
Prl Civil Judge and JMFC.,
Kunigal.