

ORDER

The plaintiff has filed I.A. U/o 6 Rule 17 of CPC prayed to permit the plaintiff to amend the plaint.

2. The plaintiff sworn to an affidavit filed in support of application contending that, she has filed this suit against the defendant partition and separate possession. It is contended by the plaintiff that, her deceased father Venkatappa had two wives by name Hanumakka and Jayamma who is the first defendant in the suit. She and defendants no.2 to 4 are the children of Jayamma. During the life time of Venkatappa he allotted the shares to his 1st wife and her children through registered partition deed dtd: 21-11-1977. After partition her father and mother was continued in the joint family and they were in joint possession and enjoyment of suit schedule property. As such the suit schedule properties are liable to be partition among the parties to this suit only, those mistakes are to be corrected. The proposed amendment will not alter the basic nature of the suit and not alter cause of action. Hence prayed to allow the application.

3. The defendants have filed objection to the application contended that, the plaintiff has not approached with clean hands, the registered partition deed executed on 21-8-2001 and gift deed is executed

on 21-8-2001 and the present suit was filed in the year 2014. Now the plaintiff is sought for amendment of plaint for the relief that the said partition deed and gift deed is not binding on her share , hence the same is barred by law of limitation. The defendants further contended that, the plaintiff sought for deletion of the pleading made in the plaint, but defendants in their written statement regarding pleading have taken have serious contention that, all the ancestral properties of Venkatappa and legal heirs of Venkatappa is not included in the plaint. Hence suit is bad for non joinder of necessary parties and the plaintiff has filed partial partition and it is liable to be dismissed. Hence the plaintiff cannot taken back that pleadings. Therefore prayed to reject the application.

4. Heard the counsel for plaintiff.

5. On perusal of the materials on record it is a suit for partition and separate possession. Now the plaintiff is seeking the amendment of plaint and prayed to include some of the words in the plaint. The defendants have filed objection contended that, the proposed amendment cannot be made because they have taken specific contention in their written statement that all the ancestral properties of Venkatappa and legal heirs of Venkatappa are not included in the plaint, hence suit is bad for non joinder. On perusal it is noticed tat, plaintiff is nto

praying include any new facts in the plaint, but prayed to include the explanatory facts which are already alleged in the plaint. The plaintiff is not prayed to include any new parties or properties in the plaint. In these circumstances the proposed amendment will not change the nature of the suit and cause harm to the defendant's case. Therefore the application filed by the plaintiff needs to be allowed in the interest of justice. The delay in filing the application may be compensated by imposing costs. Accordingly, I proceed to pass the following ;

Order

I.A. filed by the plaintiff U/o 6
Rule 17 of CPC is hereby allowed
on cost of Rs.300/- .

The plaintiff is permitted to
amend the plaint.

For amendment and amended
plaint.

(Smt. Geeta)
Addl. Civil Judge & JMFC.,
Sira.