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**IN THE COURT OF THE SENIOR CIVIL JUDGE AT:  
ANKOLA**

**Dated this the 1<sup>st</sup> day of February 2024**

**PRESENT:**

**Sri. Manohara M.**

LL.M.

Senior Civil Judge, Ankola.

**ORIGINAL SUIT No.20/2022**

**Plaintiff:** Smt. Jaysheree Mahesh Bhat

**-Vs-**

**Defendants:** Sri Jagdish Dhananjaya Hegde and another

**I.A.No.IX**

**APPLICANT:** Sri. Jagdish Dhananjaya Hegde

**V/s**

**RESPONDENTS:** Smt. Jaysheree Mahesh Bhat and others

**ORDER ON IA No.IX**

The defendant No.1 filed this application under Order VI Rule 17 R/W Section 151 of CPC to amend the plaint.

2. In support of this application, the defendant No.1 has sworn to an affidavit stating that the plaintiff filed this suit for partition against him joining with his mother, and he filed written statement. In the written statement, he forgotten to mention the Sy.No.95/2 measuring 0-15-0, Sy.No.94/2 measuring 0-39-0, 51 measuring 0-34-0, 50 measuring 3-31-0 and 104 measuring 3-11-0 of Kodlagadde village of Ankola Taluka as a joint family properties due to inadvertence. If the said properties are permitted to include in his written statement, the nature of suit will not change, and the truthiness and just decision could be decided. If the application is allowed, no loss will be caused to plaintiff and defendant No.2. Otherwise, he will be put to irreparable loss. Hence, this application is filed.

3. The counsel for plaintiff filed objection stating that the facts stated in the affidavit and application of defendant No.1 are false. The plaintiffs and defendants have no right in properties stated to be included. In the OS No.6/2006 filed by the defendant No.1 before Senior Civil Judge Court, Kumta, a compromise petition was filed on 20/03/2008 admitting that A and B schedule properties are allotted to plaintiff and defendants under oral partition. The properties stated in the application are allotted to the shares of

father of father of defendant No.1 and his brothers. Hence, they are not necessary properties. Chidambar Hegde and others are divided joint family members, and they are not necessary parties to this suit. The properties stated in the application are belonged to Narayan Chidambar Hegde and others. The defendant No.1 filed this application to drag the proceeding without giving the right of share of the plaintiff in the suit schedule properties. Hence, it is prayed to dismiss the application.

4. Having heard both side and having perused the plaint, IA No.IX, objection and other materials following points arise for consideration.

**1. Whether the proposed amendment is necessary to determine the real controversy between the parties?**

**2. What order?**

5. My answer to the above points are as under:-

Point No.1 : In the affirmative

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

### **REASONS**

**6. Point No.1:** Admittedly, the plaintiff filed this suit for partition and separate possession of suit schedule properties. It is the case of plaintiff that the suit A schedule properties are the properties allotted to the

plaintiff and defendants under oral partition between grand-father Chidambar Rama Hegde and family members. The defendant No.1 has averred that the descriptions of the suit A schedule properties are not correct. However, the defendant No.1 admitted that item No.1 and 2 of suit A schedule properties are undivided joint family properties of plaintiff and him. He further averred that he does not know that the suit A schedule properties are acquired jointly under an oral partition in the family of grand-father Chidambar Rama Hegde, and the said Chidambar Rama Hegde has got Dhanajay, Subraya, Narayana, Ramachandra, Chandrakala and Susheela are the legal heirs, and they are the necessary parties, and partial partition is not permissible and the suit is liable to be dismissed. In this way, though he is not denied specifically the oral partition, he stated that he does not know. Moreover, he specifically stated that the above said persons are necessary parties, and partial partition is not permissible. The plaintiff also not stated the description of the said oral partition and the filing of the suit by defendant No.1 in OS No.6/2006 and admission of the said oral partition in the said suit. She has stated only in her objection. The said objection does not amount to pleading.

7. The proviso of Order 6 Rule 17 provides that no application for amendment shall be 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 Trial. It is true that this application is filed after commencement of Trial. The object of this proviso is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. From the said provision it is further clear that the said procedure is intended to facilitate and not to obstruct the course of substantive justice.

8. The Hon'ble Apex Court held in AIR 1969 SC 1267, **Jaijairam Manohar Lal Vs National Building Material** as under:-

*The rules of procedure are intended to a hand maid to the administration of justice. The party cannot be refused relief merely because of some mistake, negligence, inadvertence or infraction of the rules of procedure.*

9. From the above ratio of Hon'ble Supreme Court, it is very clear that the party cannot be refused relief

merely because of some mistake, negligence, inadvertence or infraction of the rules of procedure. The proposed amendment is to include some of the properties in his written statement. The defendant No.1 has stated in his affidavit that the above said five properties are joint family properties. Hence, whether the said properties are joint family properties or not, could be decided only on merit after completion of trial. If the said properties are joint family properties, and the defendant No.1, able to prove the same, then certainly the defendant No.1 will be put to irreparable loss and hardship. No doubt, the trial has commenced. But the trial has not completed. It is true that the defendant No.1 has not stated why he could not raise the said amendment prior to commencement of trial in spite of due diligence. But the said amendment is necessary to determine the real controversy between the parties. Hence, the non-explaining of reason for not raising the said facts is not a ground to reject this application. If the said amendment is allowed, it would not cause any loss or injustice to other side as the plaintiff has got opportunity to file rejoinder. No doubt, the delay will be caused. The said delay could be compensated in terms of money. Consequently, I answer point No.1 in the affirmative.

**10. Point No.2:** In view of my reason on Point No.1, I proceed to pass the following:

**ORDER**

**I.A No.IX filed under Order VI Rule 17 R/W Section 151 of CPC is hereby allowed on cost of Rs.250/-.**

(Dictated to the Stenographer, transcribed by him, transcription corrected by me and then pronounced in the open court on 1<sup>st</sup> February 2024)

**(MANORHAR M.)**  
Senior Civil Judge, Ankola