

BEFORE THE SENIOR CIVIL JUDGE, KUMTA

Present : Smt. Poornima N. Pai
B.Com., LL.B.,
Senior Civil Judge, Kumta,

Dated this the 15th day of November, 2017

O.S. NO.12/2016

Plaintiff/s: 1) Vithoba S/o. Ganapati Shet @ Revankar,
Aged 76 years, Occ: Business and Agriculture,
R/o. Daroga Oni, Dharwad and others.

(By Sri. B.D.S., Advocate)

V/s.

Defendant/s: Nagesh S/o. Manibhadra Shet @ Revankar,
Aged 54 years, Occ: Service & Agriculture,
R/o. B/2, 1/6, Kaiga Township, Mallapur
Karwar, Dist : Uttar Kannada.

(D1 : By Sri. Y.V.S., Advocate)

Parties to I.A.No.III

Applicant/s: 1) Vithoba S/o. Ganapati Shet @ Revankar,
Plaintiff/s Aged 76 years, Occ: Business and Agriculture,
R/o. Daroga Oni, Dharwad and others.

(By Sri. B.D.S., Advocate)

V/s.

Opponent/s : Nagesh S/o. Manibhadra Shet @ Revankar,
Defendant/s Aged 54 years, Occ: Service & Agriculture,
R/o. B/2, 1/6, Kaiga Township, Mallapur
Karwar, Dist : Uttar Kannada.

(By Sri. Y.V.S., Advocate)

Parties to I.A.No.IV to VII

Applicant/s: 1) Shankar Bikkappa Shet,
Proposed Defts. and others.

(By Sri. S.U.A., Advocate)

V/s.

Opponent/s: 1) Vithoba S/o. Ganapati Shet @ Revankar,
Plaintiff/s Aged 76 years, Occ: Business and Agriculture,
R/o. Daroga Oni, Dharwad and others.

(By Sri. B.D.S., Advocate)

ORDER ON I.A.NO.III FILED UNDER ORDER VI RULE 17
R/W SECTION 151 OF CPC BY THE PLAINTIFFS & I.A.NO.IV
TO VII FILED UNDER ORDER I RULE 10(2) R/W SECTION
151 OF CPC BY THE PROPOSED DEFENDANTS

The I.A.No.III is filed by the Advocate for the plaintiffs under Order VI Rule 17 r/w Section 151 of CPC seeking for amendment of

the plaint and inserting a detailed genealogy of plaintiffs and defendants family tree as stated in the amended application. He has also prayed to amend the cause title of the defendants as defendant nos.2 to 28. I.A.No.IV to VII are filed by the Advocate for the proposed defendants to implead them as defendants.

2. In the accompanying affidavit, one Raghu S/o. Ganapathi Shet @ Revankar has averred that, he is the plaintiff no.2 and he is seeking the proposed amendment in the plaint to add these defendants. This amendment is sought for effective judicious and complete adjudication of lis. Due to old age and long gap of several years, he had forgotten the exact members belonging to the family tree at the time of filing the suit and only after consulting the senior, old, elderly persons he got collected the correct information about the family tree. Hence, it is necessary for bringing these parties on record to avoid multiplicity of proceedings.

3. This I.A.No.III was strongly objected by the defendant no.1 stating that, the I.A. is filed under two provisions i.e., under Order VI Rule 17 and he also prayed for impleading several persons as defendants in the cause title of the suit. Both these prayers cannot be treated together. In order to add these persons as a parties, he has to file application under Order I Rule 10(2) CPC and a party cannot be impleaded under Order VI Rule 17 CPC. Hence, prayed to reject the application. All the reasons stated in the affidavit are totally false and

created only for the purpose of filing the present suit. The defendant in his written statement has totally denied the relationship of the plaintiffs along with the defendant and he had produced one family tree with Mutation Entries. Based on the said family tree, the plaintiffs are now trying to put up a separate family tree of their own by pure imagination and it cannot be allowed. At para no.4 of the plaint, already the family tree produced with the plaint is explained. If this amendment is allowed, it would be against the pleadings of the plaintiffs themselves and the nature of the suit would be changed. It would create hardship to the defendant. Hence, he prayed to reject the application.

4. When the said application is pending for orders, one S.U.A., Advocate filed I.A.No.IV under Order I Rule 10(2) r/w Section 151 CPC to implead 3 persons as defendant nos.2 to 4. He has also filed I.A.No.V under Order I Rule 10(2) r/w Section 151 of CPC to implead 3 persons as defendant nos.5 to 7 and I.A.No.VI to implead 3 persons as defendant nos. 8 to 10 and another application is filed under Order I Rule 10(2) r/w Section 151 of CPC to implead 3 persons as defendant nos. 11 to 13.

5. The case was kept for objection of Sri. Y.V.S., Advocate. To all these I.As., he filed his objection stating that, they are not at all parties of defendant's family and they are not at all required for adjudication of the present case. His objection and written statement should be considered as part and parcel of the present objection. Some of the

parties who are appeared through S.U.A., Advocate, in the present I.A. are the persons shown in the genealogy of defendant, if they are allowed, then all other persons who are shown as family members in the family tree of defendant shall be added. Moreover, only 6 properties are shown in the present suit. But, there are more than 50 survey numbers belong to the family of the defendant. If all these parties are added, then those 50 survey numbers shall be added in this suit. The Court has to decide whether the plaintiffs have got ½ right in the suit property as prayed by the plaintiffs. To decide that aspect, adding these defendants in the family tree is not at all important. If the application is not allowed, then no hardship would be caused to the plaintiffs. If at all these applicants are family members of the plaintiffs and defendant, they can file separate suit for partition. If these parties are added, it would create unnecessary confusion. It is also brought that, the suit was kept for chief examination of the plaintiffs on 19-4-2017 as a last chance and in order to avoid leading evidence, the plaintiffs are doing all these unnecessary acts by instigating applicants to file the present applications. Hence, he prayed to reject I.A.No.IV to VII with costs.

6. Heard the arguments on both sides.

7. Regarding I.A.No.III which is filed under Order VI Rule 17, the plaintiff has come up with a case that initially he was not aware of the details of all the family members and now he wants to add one

genealogy to the plaint. It is to be noted that, the relationship of the plaintiffs itself was denied by the defendant and he had produced one genealogy in his written statement. It does not tally with that of the plaintiffs. Now the plaintiffs want to replace the genealogy at para no.2 of the plaint by completely deleting the original genealogy and replace the same with a new genealogy based on the details given in the written statement of the defendant which cannot be allowed. Moreover, at para no.4 of the plaint, they have given clear explanation as to how main propositus Balu Jattayya Shetty had left behind his son Ganapati and Parameshwar and how the plaintiffs and defendant are entitled to their share in the suit property. If only para no.2 is substituted, it would lead to total contradictory pleadings against his own case. No basis was produced for producing this genealogy at this stage, when the plaintiff himself had come before the Court with specific case. Moreover, at plaint cause title he want to insert defendant nos.2 to 28 as defendants but none of their age, occupation and their permanent residence is given in the application. All are shown as major, agriculturist and originally resident of Hiregutti village, Kumta. If this application is allowed and permitted to be brought on record as per the amendment, then all these 28 persons should be served with Court summons. The address given in the amendment application is totally insufficient as it does not state about the wife, husband or father's name, their occupation, their age and not even their correct address. When such is the case, if at all the application is allowed to be amended, then it would cause more injustice and delay in serving the notice to the defendants. Hence, I have not found any

reasons for allowing I.A.No.III for amendment of the plaint and impleading parties in the I.A. Hence, I.A.No.III is hereby rejected.

8. Regarding I.A.No.IV to VII, the parties shown in I.A.No.IV to VII are found in the genealogy shown by the defendant himself in the written statement. Nothing can prevent them from coming on record when the defendant himself has shown their name. Hence, they are necessary parties in the present suit as joint family members and I am of the opinion that, when they have appeared through their counsel, they should be permitted to appear and contest the case for their right. Hence, sufficient grounds are made out for allowing I.A.No.IV to VII filed under Order I Rule 10(2) r/w Section 151 of CPC. Hence, I proceed to pass the following :-

ORDER

The I.A.No.III filed under Order VI Rule 17 r/w Section 151 of CPC by the plaintiffs is hereby rejected.

I.A.No.IV to VII filed under Order I Rule 10(2) r/w Section 151 of CPC by the proposed defendant nos.2 to 13 is hereby allowed. The plaintiffs are permitted to amend the plaint and implead the parties in I.A.No.IV to VII as defendant no.2 to 13 respectively.

Call on for amendment and filing amended plaint by the plaintiffs.

(Dictated to the stenographer, transcription revised, typed by her on computer, corrected by me and then pronounced in the Open Court on this 15th day of November, 2017)

(Smt. Poornima N. Pai)
Senior Civil Judge, Kumta,