

KAUP400028872023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS AT BAINDURU.**

PRESENT:

Smt.Vidya, A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,
Bainduru.

Dated this the 20th day of February 2023

New Original Suit No.499/2023

Old Original Suit No.433/2017

Plaintiff	Sudhakara Naik, Aged about 25 years, S/o. Late Rama Naik, R/at: Ballikuli House, Muduru Village and Post, Kundapura Taluk, Udupi District.
Defendants	1. Babanna Naik, Aged about 65 years S/o. Late Govinda Naik, R/at: Ballikuli House, Muduru Village, Kundapura Taluk, Udupi District. 2. Nagappa Naik, S/o. Late Govinda Naik, R/at: Ballikuli House, Muduru Village, Kundapura Taluk, Udupi District. 3. Girija, Aged about 60 years,

	<p>4. Ganga, aged about 38 years,</p> <p>Plaintiff No.3 and 4 are children of Govinda Naik,</p> <p>Plaintiff No.3 and 4 are R/at: Ballikuli House, Muduru Village, Bainduru Taluk, Udupi District.</p>
	<u>Rank of the Parties On I.A.XVII</u>
Applicant/Plaintiff:	Sudhakara Naik
	(Rep. by Sri. T.G.R.- Advocate)
Opponents/Defendants:	Babanna Naik and others
	(Rep. by Sri.S.K.H- Advocate for defendant No.1) (Rep. by Sri.H.V.K.S- Advocate for defendant No.2)

ORDER ON I.A. NO. XVII

The application filed by the plaintiff under Order VI Rule 17 R/w. section 151 of CPC seeking permission of the Court to amend the plaint.

2. In the accompanying affidavit, the applicant has stated that, as per application filed by the 3rd defendant on behalf of their family, kumki land was granted by the Akrama Sakrama committee. Hence, that property also liable for partition. With these averments the applicant has sought for allowing the application.

3. Per contra, defendant No.3 has filed objection to the said application, contending that, the portion of property bearing S.No.72 was in use, occupation and exclusive possession of the defendant No.3 and she had planted and reared Cashew Nut and other fruit bearing trees therein by constructing a residential house therein and by erecting a well since more than 30 years and as such, she submitted application for grant of the said property to the Akrama Sakrama Committee, of Kundapura Taluk. Her said application was enquired into by the said committee as per their proceedings A.Dis.N.C.R./S.R.182/2002-03 and it has ordered for grant of property bearing S.No.72/1 measuring 1.88 acres exclusively in favour of the defendant No.3 with condition to pay the required fees and fine thereof. Accordingly, on payment of said money, the Tahasildar, Kundapura in their proceedings A.Dis.N.C.R. DR.76/2002-03 issued Form No.7 on 19-07-2002. That, on such grant, defendant No.3, by availing subsidy and loans from society and other institutions got constructed house and converted the said property as garden land and has been in exclusive possession thereof by erecting fence all over the said property. This property not abutting to any of the plaint 'A'

schedule property, but situated separately. Therefore, at any event, the property now sought to be included in the plaint, not partible amongst parties to the suit, but individual property of the 3rd defendant. With these contentions the defendant No.3 has sought for rejecting the application.

4. Heard the argument of the learned counsel appearing for the parties and perused the material on record.

5. Now, the following points arise for consideration of this Court are:

Point No. 1:Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?

Point No. 2:Whether the proposed amendment change as the nature of the suit or cause of action?

Point No. 3: What order?

6. The findings of this Court on the above said points are as under:

Point No.1: In the Affirmative;

Point No.2: In the Negative;

Point No.3: As for the final order

for the following:

REASONS

7. **Points No.1 and 2:** : On perusal of case file, it is seen that the plaintiffs have sued the defendants for seeking the relief of partition.

8. Now, for ready reference, order VI Rule 17 is extracted here below:

17. Amendments of Pleadings: "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties"

"Provided 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".

9. The object of Order VI Rule 17 is to minimize the litigation, minimize the delay and to avoid multiplicity of suits. In this case, the applicant has stated that, he has got right over the S.No.72/P1 measuring 1.88. per contra defendant No.3 has contended that, afore said property is her individual property. Hence, amendment is necessary for the purpose of

determining the real question in controversy between the parties. The plaintiff has made out sufficient grounds to allow the application. With these observations, this court has answered point No.1 in the affirmative and point No. 2 in the Negative.

10. Point No.3: For the aforesaid discussion on point No.1 and 2, this Court proceeds to pass the following:

O R D E R

I.A.No.XVII filed by the applicants under Order VI Rule 17 of CPC is hereby allowed.

The plaintiff is permitted to amend the plaint as mentioned in the application.

No order as to costs.

For amendment and amended plaint.

Call on: 06-03-2023

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **20th day of February, 2023**)

**[Smt.Vidya.A.S]
Civil Judge & J.M.F.C.,
Bainduru.**