

KABI510015782015



**IN THE COURT OF CIVIL JUDGE & JMFC,  
KUDLIGI**

**Present: Smt. C.Mahalakshmi., B.A.L., L.L.M.  
Civil Judge & JMFC, Kudligi**

**O. S. No. 102/2015**

**Dated this 23<sup>rd</sup> day July 2024**

**Between :-**

Papamma

.... Plaintiff

**And**

Smt. Papamma & others

.... Defendants

**I.A.No.I**

Papamma

.... Plaintiff/Applicant

**(By Sri. A.S.R., Adv.)**

**And**

Papamma & others

.... Defendants/Respondents

**(D1 By Sri. S.M., Adv.)**

**(D2 and 3 By Sri. K.J.G., Adv.)**

**ORDERS ON I.A.No.I U/Order VI Rule 17 of CPC R/w  
Sec.151 of CPC**

**01.** This application is filed in the year October-2016 when the case was posted for plaintiff evidence. Now the case is posted for plaintiff

evidence as defendant no.1 deceased and subsequently her lr's were impleaded and additional issues were framed and case is posted for plaintiff evidence. The plaintiff has filed I.A.No.I U/Order VI Rule 17 of CPC R/w Sec.151 of CPC to permit her to amend the plaint. The present suit is for partition.

**02.** It is contended in the affidavit accompanying the application that the plaintiff has filed the above suit for partition through plaintiff's GPA holder. That the plaintiff has discharged the GPA and conducting the case personally. There needs to be amendment in that regard and that the entire extent of item no.5 is mentioned in the plaint whereas, plaintiff is entitled to only share in half portion of item no.5. That the said property is jointly standing in the name of defendant no.2 and her earlier GPA holder Manjunatha.

**2(a).** That in the suit schedule property the entire extent of item no.6 is mentioned in the plaint whereas, plaintiff is entitled to only share in half portion of item no.6. That the boundaries to the said property was not included in the plaint, therefore, the amendment to insert the same is necessary.

**2(b).** Item no.7 measurement is mentioned as 1.62 acres whereas it measures only 0.54 acres. That the said property is jointly standing in the name of defendant no.2 and her earlier GPA holder Manjunatha and S.P. Prakash. That the plaintiff's family is entitled to only an extent of 0.31 acres. Therefore, the schedule needs to be amended along with including the boundaries.

**2(c).** That the item no.9 does not belong to the family of the plaintiff, it belongs to H. Basamma W/o Gaviyanna. Therefore, the same needs to be deleted.

**2(d).** That the trial has not commenced yet. That the proposed amendment will not change the nature and character of the suit and does not introduce new cause of action. That no hardship will be caused to the defendant if the application is allowed. Therefore, she prayed to allow the application.

**3.** On the other hand, the defendant no.2 and 3 have filed objection and stated that the suit is instituted through GPA holder. Unless the GPA is revoked, the plaintiff cannot prosecute the case individually. That that item no.5 belongs to defendant no.2 which was bequeathed in favour of defendant no.2 by Kariyamma in the year 1990

through registered Will. That the defendant no.2 is having right over the whole extent. That the boundaries furnished with respect to the item no.5 is incorrect. In the said amendment, the plaintiff intends to show that towards the north of the property bearing Sy.no.580-B/2, the property of S.P. Manjunatha is situated. But in the said survey number, the entire extent belongs to defendant no.2. That with respect to item no.7 bearing Sy.no.503-A/2 is divided into three parts. Therefore, Sy.no.503-A/2 is not existing and the survey number and boundaries shown with respect to the said survey number is incorrect. That there is no extent measuring 31 cents in the said survey number. The defendant no.2 and 3, therefore, they prayed to reject the application.

**04.** Heard.

**05.** The points that arises for my consideration are:-

### **P O I N T S**

**1.Whether the application no.I deserves to be allowed ?**

**2.What Order ?**

**06.** My findings on the above points are as follows:-

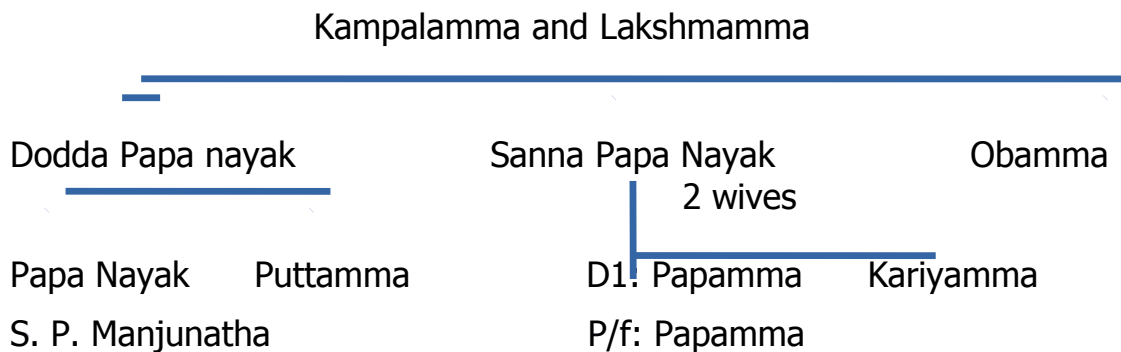
**POINT No.1 : In the Affirmative.**

**POINT No.2 : As per the final order  
for the following:-**

### **R E A S O N S**

**07. POINT No.1 :-** This is a suit for partition and separate possession instituted by the plaintiff against the defendant no.1. The case of the plaintiff is that the defendant no.1 is her mother. That plaintiff's grandfather Kampalappa and grandmother Lakshamma had 3 children by name 1) Dodda Papa Nayak had a son by name Papa Nayaka and a daughter by name Puttamma. Papa Nayaka had a son by name 1) S.P. Manjunatha. 2) Sanna Papa Nayaka who had 2 wives by name a) Papamma who is defendant no.1 herein. Plaintiff is the daughter of the said Papamma. b). Kariyamma who is expired. 3) Obamma.

**7(a).** The genealogy tree is as under:-



**7(b).** Dodda Papa Nayak and Sanna Papa Nayaka had partitioned their property long ago. The suit schedule properties are fallen to the share of plaintiff's father Sanna Papa Nayaka. Therefore,

the same is the joint family properties of plaintiff and defendant no.1. That there was no partition between the plaintiff and defendant no.1. That the names of the defendant no.2 and 3 are mentioned in the ROR. They are no where related to the plaintiff. That the plaintiff's grandfather did not have a wife by name Rangamma. Rangamma's husband name is Mugappa. They have 3 children by name Palamma, Sanna Lakshamma and Dodda Lakshamma. Defendant no.2 is the son of Palamma and defendant no.3 is the wife of defendant no.2. That the 2<sup>nd</sup> wife of plaintiff's father by name Kariyamma and the defendant no.1 are not the owners of the suit schedule properties. The defendant no.1 or Kariyamma have not executed any document in favour of defendant no.3. That the defendant no.3 and defendant no.4 in collusion with revenue officials have mutated the suit schedule properties in their favour. Therefore, the present suit of partition is filed between the plaintiff and defendant no.1.

**08.** The defendant no.2 and 3's case is that there was partition between Kampalappa and his children Dodda Papa Nayaka and Sanna Papa Nayaka. Sanna Papa Nayaka had no male issues. Therefore, defendant no.2 who is the grand son of sister of Sanna Papa Nayaka was looking after the welfare of Sanna Papa Nayaka and his wife

defendant no.1 and plaintiff, Kariyamma. Therefore, on 03.12.1986, father of the plaintiff, had executed gift deed with respect to item no.1 to 8 and mutation were effected in favour of defendant no.2. That after the death of father of the plaintiff, his 1<sup>st</sup> wife Kariyamma was managing the estate of her husband. During the life time of 1<sup>st</sup> wife Kariyamma, Sanna Papa Nayak's 2<sup>nd</sup> wife and plaintiff have no right over the suit schedule properties. The said Kariyamma had executed a registered Will with respect to suit schedule properties in the favour of defendant no.2. That the defendant no.1 and plaintiff have objected the Will and gift deed executed by Kariyamma and Sanna Papa Nayaka. Therefore, defendant no.2 by making some payments has obtained registered consent deed. Therefore, they prayed to dismiss the suit.

**09.** In this case, it is pertinent to note that the plaintiff has revoked the GPA given earlier to S.P. Manjunatha. Therefore, the defendant no.2 and 3 have stated that they have no objection to the extent of making amendment to the plaint with respect to deletion of plaint to the extent of averments regarding GPA. The defendants states that the plaintiff is estopped from contending contra that half portion in some of the schedule has fallen to the share of her father and remaining half portion in the suit schedule property is fallen to the

share of her father's elder brother, when she has averred in her plaint that the entire extent in suit schedule properties are fallen to the share of her father. The defendant no.2 and 3 have further contended that the plaintiff by seeking proposed amendment wants to create a new case that some items in the suit schedule properties are fallen to the share of her father's elder brother. But the suit schedule properties are gifted and bequeathed in favour of defendant no.2 and 3 by plaintiff's father. The plaintiff by seeking the proposed amendment wants to create a case that the entire suit schedule properties are not fallen to the share of her father. Therefore, the plaintiffs want to defeat the case of the defendant no.2 and 3.

**10.** It is pertinent to note that the present suit is for the relief of partition. Therefore, the burden to prove that the suit schedule properties what properties fell to the share of plaintiff's father's share is on the plaintiff. On the other hand, the defendant has taken contention that the entire portion of suit schedule properties are fallen to the share of the plaintiff's father and they were gifted and bequeathed in favour of defendant no.2 and 3. Therefore, even if the plaintiff restricts her claim to half portion in some of the suit schedule properties, the defendant no.2 and 3 who are urging their independent right over the

suit schedule property, can prove their case independently and also can prove that the entire portion fell to the share of plaintiff's father. Therefore, by seeking the proposed amendment, no harm will be caused to the defendant no.2 and 3. Therefore, point no.1 is answered in the **Affirmative**.

**11. POINT No.2 :-** In view of my findings on the above Point No.1, I proceed to pass the following:-

**ORDER**

I.A.No.I filed U/Sec. VI Rule 17 R/w Sec.151  
of CPC by the plaintiff is hereby allowed.

Consequently, plaintiff is permitted to amend  
the plaint.

No order as to costs.

(Dictated to the stenographer transcribed and computerized by him corrected and then pronounced by me in the open court on this **23<sup>rd</sup> day of July 2024.**)

**( Smt. C.Mahalakshmi )  
Civil Judge and J.M.F.C.,  
Kudligi**

For orders.  
Call on: 18.07.2024.

**Civil Judge and J.M.F.C.,  
Kudligi**

For orders.  
Call on: 20.07.2024.

**Civil Judge and J.M.F.C.,  
Kudligi**

For orders.  
Call on: 22.07.2024.

**Civil Judge and J.M.F.C.,  
Kudligi**

For orders.  
Call on: 23.07.2024.

**Civil Judge and J.M.F.C.,  
Kudligi**

(Order pronounced in the open  
court vide separate order)

**ORDER**

I.A.No.I filed U/Sec. VI Rule 17  
R/w Sec.151 of CPC by the plaintiff is  
hereby allowed.

Consequently, plaintiff is  
permitted to amend the plaint.

No order as to costs.

Call on:

**Civil Judge and J.M.F.C.,  
Kudligi**

