

**ITINERARY SITTING AT SENIOR CIVIL JUDGE
HUVINAHADAGALI**

Dated this the 6th day of June 2025

PRESENT

MADHUSUDHANA D.K.
Itinerary Senior Civil Judge
Huvinahadagali

OS. No. 02/2019

**Plaintiffs : Smt. Hunsikayi Sumitramma
D/o Lrs & Others**

V/s

**Defendants : Smt. Parashetty Kamma &
Another**

**ORDERS ON IA NO.31 UNDER ORDER 6 RULE 17
READ WITH SECTION 151 OF CPC**

The Plaintiffs have filed the above IA No.31 dated 06.12.2024 under Order 6 Rule 17 read with Section 151 of CPC by seeking Amendment of the Plaint to include a Paragraph at the beginning of the Paragraph No.4 as follows:

Deceased Parashetty Veerappa and Plaintiff No.1 Smt. Sumitramma were having 48 Goats and 8 Milking Cows and therefore, they have purchased the Suit Schedule Property out of the Income derived from selling Milk, Goats

and Cows and also by pledging the Gold Ornaments of the Plaintiff No.1 and they have purchased the Sy. No. 87 measuring 6A 10C under a Registered Sale Deed dated 26.06.1974 in the name of Deceased Parashetty Veerappa and Sy. No. 87 measuring 6A 13C under a Sale Deed dated 18.11.1974 in the name of Deceased Parashetty Veerappa hence Joint Family Property.

2. In support of the IA No.31, the Plaintiff No.2 Smt.Lalithamma deposed to her Affidavit and the brief averments made by her are that, the Plaintiffs have filed OS No. 55/2015 in the Court of Civil Judge and JMFC in Huvinahadagali against the Deceased Defendant No.1 by seeking Declaration and Permanent Injunction. At that time, she had instructed the above facts in respect of Proposed Amendment to her Advocate. But, due to mistake and oversight, the said facts were not pleaded in the present Plaint. Her Advocate has mistakenly mentioned that, *the Suit Schedule Property was Self Acquired Property of her father Parashetty Veerappa and* therefore, the Plaintiff No.2 has sought for the present Amendment in her Plaint and the allowing of the IA No.31 will not cause any harm to the Defendants but, the Plaintiffs will suffer irreparable loss. Therefore, the Plaintiff No.2 has prayed for allowing of her IA No.31.

3. The Defendant No.2 has filed his detailed Objections to the IA No.31 and the brief averments made by him are that, the Proposed Amendment is hit by Section 121 of BSA 2023. The Plaintiff No.2 has admitted in her cross-examination that, *Late Veerappa had no independent Income as on the date of acquiring of Land in question* and except the Income from the Properties of the Family, there was no independent Income to acquire the Suit Schedule Property and therefore, the Proposed Amendment is against to the admission of the PW1 and the Application is also filed after delay and therefore, the Defendant No.2 prays for Rejection of the IA No.31.

4. I have heard arguments of Rival Parties and perused the Material placed on Record.

5. The following Points are arisen for my consideration:

POINTS

1. Whether the Plaintiffs show that, in spite of their due diligence they could not have raised the Proposed Amendment before commencement of Trial and the Amendment will not take away admissions given in their Evidence?

2. What Order?

6. Now, My answers to the above Points are as follows:

ANSWERS

POINT NO.1 : In the Affirmative

***POINT NO.2 : As per the final order,
for the following:***

REASONS

7. ***POINT NO.1*** : I have already narrated the Case of the Plaintiffs and the Defendants at the inception of the above Orders and therefore, to avoid repetition, the same will not be reiterated here.

8. The Plaintiffs have filed this Suit on 23.01.2019 and the Plaintiffs have filed the above Suit for Declaration and Permanent Injunction against the Defendants. The Plaintiff was already Amended by the Plaintiffs in the Year 2020 and in the Year 2024. The Record shows that, before filing of the above IA No.31, the Plaintiffs have examined PW1 to PW3 by marking Ex.P1 to Ex.P19 in their Evidence. The Plaintiff No.2 has deposed in her Affidavit of the IA No.31 that, at the time of filing OS No.55/2015 against the Deceased Defendant No.1 by seeking Declaration and Permanent Injunction in respect of the Suit Schedule Property, she has Orally informed her Advocate about Parashetty Veerappa and Plaintiff No.1 Sumitramma have purchased the Properties by doing Milk Vending, Goat and Cows rearing Business but, her Advocate did not place the

said pleadings in this Suit. But, in the present Suit, the Plaintiffs did not make any efforts to bring the Proposed Amendment in their Complaint on the earlier occasions when their Complaint was Amended in the Year 2020 and 2024. The Defendant No.2 has specifically contended that, in the cross-examination of the PW1, she has clearly admitted that, *Deceased Veerappa had no Income of his own*. But, the cross-examination of the PW1 shows otherwise as the PW1 has deposed in her cross-examination about Parashetty Veerappa was having Dairy Business and by pledging his wife's Gold Ornaments, he had purchased the Properties. Therefore, though, the Proposed Amendment is claimed after commencement of Trial and the Plaintiffs have not made any efforts in their earlier Applications for Amendment to bring the Proposed Amendment, the cross-examination of the PW1 supports the contentions taken by the Plaintiff No.2 in her Affidavit. Since the evidence on the Proposed Amendment is already on Record as revealed by the cross-examination of the PW1, the Defendants contentions about Proposed Amendment will destroy the admissions given in their favor cannot be considered by the Court. The Plaintiffs have filed more than 2 Applications for Amendment of Complaint by causing inconvenience to the Defendants as well as to the Court in disposal of this Old Case and therefore, imposing of

exemplary Costs on them will be justifiable in allowing the IA No.31. Therefore, ***I will answer the Point No.1 in the Affirmative.***

9. **POINT NO. 2:** For the above discussion, I proceed to pass the following:

ORDER

The IA No.31 of the Plaintiffs filed under Order 6 Rule 17 read with section 151 of CPC is hereby allowed by imposing Costs of Rs.3,000/- payable to the Defendant No.2.

The Plaintiffs are directed to carryout the Amendment of the Plaint and furnish the Amended Plaint in the Office before next date of hearing.

If the Plaintiffs and their Counsel did not comply the above Order in Letter and Spirit, this Order will be recalled on the next date of hearing.

Call on for compliance by 05.07.2025.

Sd/-

MADHUSUDHANA D K
Itinerary Senor Civil Judge
Huvinahadagali