

**IN THE COURT OF ITINERARY SENIOR CIVIL JUDGE
HUVINAHADAGALI**

Dated this the 7th day of March 2025

PRESENT

MADHUSUDHANA D K
Senior Civil Judge
Itinerary sitting at Huvinahadagali

OS. No. 74/2019

Plaintiff: Smt. B.Shakuntamma

V/s

Defendants: Smt. Shanthamma and Others

***ORDERS ON IA NO.14 AND IA NO.15 FILED BY THE
PLAINTIFF***

The Plaintiff's GPA Holder and her son Sri Chidananda has filed the IA No.14 for Amendment of the Plaintiff and the IA No.15 by seeking Permission to produce and mark Additional Documents in evidence.

2. In support of the IA No.14 and IA No.15, the GPA Holder of the Plaintiff has filed his affidavits by deposing to common set of facts. In brief, he has deposed that, his mother has filed the above Suit for Partition of 1/4th share in respect of the Joint Family Properties and the GPA Holder has obtained the Record of Rights of the Sy.No.235A measuring 7.26 Acres belongs to

T.Gurubasavana Gouda and he has also obtained Orders of the Assistant Commissioner in respect of the Appeal No.88/2019 pertains to the above Survey Number and therefore, it is necessary for him to Amend the Plaint and to produce and mark the Proposed Documents in evidence.

3. By way of filing the IA No.14, the GPA Holder of the Plaintiff has sought for inclusion of Paragraph No. IV(a) and IV(b) which runs 2 ½ Pages in length.

4. The Defendants No.1 and 4 have filed their Separate Objections to the IA No.14 and IA No.15. In brief, they have denied the contentions of the GPA Holder of the Plaintiff as false. The Defendant No.1 has contended that, execution of the Registered Will dated 11.08.2011 in respect of the Sy. No.235A/3 measuring 1A 82C by Smt. Shivabasamma in favor of Defendant No.1 is well within the knowledge of the Plaintiff and the Plaintiff has filed this time barred Suit and the above Applications are filed to cause harassment to the Defendant No.1 and therefore, the Defendant No.1 has prayed for dismissal of the IA No.14 and IA No.15.

5. The Defendant No.4 has contended in his Objections that, the Sy.No.253A/3 measuring 1A 82C belonged to Smt. Shanthamma and the same was sold in favor of the Defendant No.4 under a Registered Sale Deed

dated 02.05.2019 and this fact is well within the knowledge of the Plaintiff and therefore, like the Defendant No.1, the Defendant No.4 has also prayed for dismissal of the IA No.14 and IA No.15.

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

7. The following Points are arisen for my consideration:

POINTS

- 1. Whether the GPA Holder of the Plaintiff is entitled for Amendment of the Plaint as sought in his IA No.14?**
- 2. Whether the GPA Holder of the Plaintiff shows reasons for permission to produce and mark Additional Documents?**
- 3. What Order?**

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

ANSWERS

- POINT NO.1 : In the Negative**
POINT NO.2 : In the Negative
**POINT NO.3 : As per the final Order,
for the following:**

REASONS

9. **POINTS NO.1 AND 2:** I have already narrated the Case of the GPA Holder of the Plaintiff and the Defendants No.1 and 4 at the inception of the above Orders and therefore, to avoid repetition, the same will not be reiterated here.

10. In the Schedule of the IA No.14 filed for Amendment, the GPA Holder has inserted Pleadings as if he is the Original Plaintiff having the First Hand information about the Transactions taken place before his coming to give evidence in the Suit as the GPA Holder for the Plaintiff. The Record of the above Case shows that, earlier the Plaintiff Smt.Shakunthala has filed her Affidavit and examined as the PW1 but, she did not appear for cross-examination and on the ground of Fracture of Neck Left Femur, she has got appointed this GPA Holder to give evidence as the PW2. When the Case was posted for the cross-examination of the PW2 and after giving specific directions to either Parties to complete the cross-examination, the GPA Holder has filed the above Two Applications. This Suit was filed on 20.12.2019 and as on the date of filing of IA No.14 and IA No.15 on 04.01.2025, this Suit has already completed 4 Years and it is on the threshold of 5th Year.

11. By way of filing the IA No.14 for Amendment, the GPA Holder of the Plaintiff is trying to deny the Registered

Will dated 11.08.2011 and the Registered Sale Deed dated 02.05.2019. The Issue No.3 and Additional Issue No.1 are framed by placing the burden of proof to prove the Will on the Defendant No.1 and the burden to prove the Sale Deed is placed on the Defendant No.4. The GPA Holder has deposed in his Affidavit of the IA No.14 that, *recently I was examined as PW2 and partly cross-examined by the 1st Defendant. In the said cross-examination, the Defendant has raised query about non-inclusion of Land bearing Sy.No. 235A/4 measuring 1.82 Acres and also the said facts have not been stated in the Plaint as the said Property was alienated on behalf of the Joint Family.* The GPA Holder of the Plaintiff has also claimed to have given instructions to the Plaintiff's Advocate along with his Mother to file this Suit. But, till his appearance on 19.11.2022 as the PW2, this GPA Holder was not in picture in this Suit. Therefore, by way of filing these IA No.14 and IA No.15, the GPA Holder is trying to destroy the Admissions given by him in his cross-examination conducted by the Defendant No.1. If the Sy.No.235A/4 was alienated on behalf of the Joint Family as per the proposed Amendment, the said fact was well within the knowledge of the Original Plaintiff and she would have pleaded the same in her Plaint in the First Instance. But, the GPA Holder contends in his Affidavit that, *he has obtained the RTC Extracts and Mutation Order Copies and*

*then he came to know about the alleged facts and therefore, he is filing these Applications. The allowing of the IA No.14 and 15 is having the effect of taking away or dilating the Admissions given by the PW2 in the cross-examination and a Party to the Suit will not be permitted to make improvement of his Case by filing such Applications and therefore, **I answer the Points No.1 and 2 in the Negative.***

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

ORDER

The IA No.14 and IA No.15 of the Plaintiff filed under Order 6 rule 17 of CPC and under Order 7 rule 14(3) of CPC are hereby Rejected.

Call on for further cross examination of the PW2 on 21.03.2025.

(Dictated to the Stenographer directly on computer, corrected and signed by me and then pronounced in the open Court on this 7th day of March, 2025)

Sd/-

MADHUSUDHANA D K
Itinerary Senior Civil Judge
Huvinahadagali