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IN THE COURT OF CIVIL JUDGE AND JMFC., AT YADGIRI

PRESENT

**Sri. Arun Chougule,
B.A.LL.B.[Hons.]
Civil Judge and J.M.F.C,**

Dated this the 05th day of December-2024

ORIGINAL SUIT NO.28/2011

PLAINTIFF/S:-	Pramila D/o Shivaramsingh Tiwari, aged about: 40 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri. Y.V.V Advocate)
	-V/S-
<u>DEFENDANT/S:-</u>	Lachiram S/o Shivaramsingh Tiwari, aged about: 42 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri.N.R.K Advocate)

IN I.A.No.8

<u>Applicants/ plaintiff/s :</u>	Pramila D/o Shivaramsingh Tiwari,
	-V/S-
<u>Opponents/ defendants :</u>	Lachiram S/o Shivaramsingh Tiwari.

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i.	<i>Provision under which the application is filed</i>	Order 6 Rule 17 Of CPC.
ii.	<i>Relief sought for</i>	<i>Permission to Amend the Plaintiff</i>
iii.	<i>The date on which the application is filed</i>	15-10-2024
iv.	<i>Number of the application</i>	IA No.8
v.	<i>The date on which the objections are filed by different opponents</i>	28-10-2024
vi.	<i>The date on which the orders were passed on the said application.</i>	05-12-2024

**ORDER ON I.A.NO.8 FILED BY THE PLAINTIFF UNDER
ORDER 6 RULE 17 OF CPC.**

The plaintiff has filed the present application under Order 6 Rule 17 of CPC seeking permission to amend the plaintiff.

2. The plaintiff has sworn to an affidavit in support of the application stating that, she has filed suit against the defendant seeking the relief of declaration of title and consequential relief of permanent injunction. That, the suit was decreed by this court on 26.03.2015. The defendant being aggrieved by the same had filed appeal before Hon'ble Court of Senior Civil Judge, Yadgiri in RA No.19/2015 which came to be allowed on 03.02.2015, whereby judgment and decree passed by this court

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in favour of the plaintiff was set aside. Being aggrieved by the same, the plaintiff filed RSA NO.200120/2016 before the Hon'ble High Court of Karnataka, Kalaburagi Bench. In the said appeal, the plaintiff being the appellant filed IA No.2 under Order 41 Rule 27 of CPC along with copies of two will deeds executed by her deceased mother and sister . The Hon'ble High Court allowed the appeal and remanded the matter to this court with a direction to give opportunity to both parties to produce additional documents.

3. It is stated that, the plaintiff is claiming title over the properties on the basis of will deeds executed by her mother and sister. That, the deceased mother and sister of the plaintiff have bequeathed non-schedule properties i.e., ½ share in the cattle shed bearing No.1-3-125/1, shop bearing No.1-7-56 and house bearing No.1-3-139/1 of Gurumitkal along with their interest in the suit schedule properties. It is stated that the plaintiff was not aware of will deeds executed by her deceased mother and sister at the time of filing the suit and therefore, she could not include the non-schedule properties bequeathed in her favour in the present suit. As such, it is now necessary to include the said non-schedule properties in the suit.

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4. It is stated that, the plaintiff earlier claimed title on the basis of partition and principle of survivorship. However, now she is claiming title on the basis of will deeds executed by her deceased mother and sister. Therefore, the plaint needs to be suitably amendment. That, the proposed amendment, if allowed, would neither change the nature of the suit nor cause any harm or loss to the opponent.

5. It is stated that, the suit item No.6 land bearing Sy.No.319/A measuring 05 acres 33 guntas was allotted to the joint share of the plaintiff, her deceased mother and sister Jugunabai. The plaintiff is having $1/3^{\text{rd}}$ share in the said property and the remaining $2/3^{\text{rd}}$ share of the plaintiff's deceased mother and sister Jugunabai devolves upon their legal heirs, who will be brought on record after the present application is allowed. That, the plaintiff is having a share in the $2/3^{\text{rd}}$ share of her mother and sister in suit item No.6. As such, the plaintiff is claiming partition and separate possession in respect of her share in suit item No.6. Hence, the plaintiff prays to allow the application.

6. The defendant has filed objections contending that the application is not maintainable at this stage since the Hon'ble

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High Court has directed to give opportunity to the plaintiff to lead evidence but not for amendment of the plaint. That, the proposed amendment, if allowed, would change the nature of the suit and therefore, the application is liable to be rejected. It is contended that the application is filed with an intention to drag on the matter. On these grounds, the defendant sought to dismiss the application.

7. Heard the arguments of both side.

8. After hearing the arguments and perusal of pleading and records, the following points arise for my consideration.

1. Whether the application deserves to allowed?

2. What order?

9. My findings on the above points are as under;

Point No.1 : Partly In the Affirmative

**Point No.2 : As per final order,
for the following:**

REASONS

10. **POINT NO.1:** The plaintiff has filed the present suit seeking the relief of declaration of title and permanent

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injunction restraining the defendant from dispossessing her from the suit lands.

11. The case of the plaintiff is that herself and the defendant are brother and sister and they are members of Hindu divided family. That, all the family properties were divided in a family oral partition held on the day of Ugadi in the year 1982 and thereafter, the terms of partition were reduced in the writing in form of a memorandum of partition on 03.05.1993. Since the date of partition, the plaintiff and the defendant are in lawful possession and enjoyment of the properties fallen to their respective shares. That, the suit schedule properties and non-suit schedule residential house were fallen to the joint share of the plaintiff, her deceased mother Amruthabai and her deceased sister Jugunabai. After the partition, the suit lands except suit item No.6 were mutated in the name of plaintiff's mother. Thereafter, the plaintiff's sister died on 19.09.2003 and her mother died on 03.11.2008. After the death of her mother and sister, the plaintiff having become the absolute owner is in possession and enjoyment of the suit land. It is alleged that the defendant having no manner of right, title or interest over the suit properties is denying the plaintiff's

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title over the suit properties and trying to dispossess her from the possession thereof. Hence, plaintiff was constrained to file the present suit.

12. The defendant having appeared through his counsel filed written statement denying the case of the plaintiff including the alleged oral partition claimed by the plaintiff. The defendant contended that his father Shivaramsingh Tiwari was the owner of the suit properties and other non-suit schedule house and shops situated at Gurumitkal Town. The father of the defendant died in the year 1977 leaving behind his widow Amruthabai, two sons by names Gopalsingh (died in the year 1985) and Lachiramasingh (defendant), and three daughters by names Radhabai, Umabai and Pramila (plaintiff). It is contended that, after the death of elder son Gopal Singh in the year 1985 the family met into division wherein the defendant's mother Amruthabai had voluntarily taken an open plot situated near bus stand, a shop bearing No.1-7-56, lands bearing Sy.Nos.135/A and 135/2-A along with southern $\frac{1}{2}$ portion of the house for her share. That, the plaintiff is getting rent of Rs.2,000/- per month from the shop and yield from land bearing Sy.No.135/A and 135/2-A and she is residing in the

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southern ½ portion of the house. The plaintiff and her mother used to reside in their portion of the house and they were leading life out of the income received from the above two lands and the rent. That, the plot fallen to their share has been sold by the plaintiff and her mother. After the death of their mother, the plaintiff is residing alone and she is receiving rent and yield from the lands. However, the plaintiff has filed false suit on the instigation of her sister Radhabai's husband Premprasad with an intention to cause loss to the defendant. On these grounds, the defendant sought to dismiss the suit.

13. Having regard to pleadings of the parties, this court framed necessary issues and recorded evidence of both parties. Thereafter, the suit was decreed by judgment dated 26.03.2015. Aggrieved by the same, the defendant filed appeal before Hon'ble Court of Senior Civil Judge, Yadgiri in RA No.19/2015, which came to be allowed and the decree passed by this court in favour of the plaintiff was set aside. Thereafter, the plaintiff filed appeal before Hon'ble High Court of Karnataka in RSA No.200120/2016 and filed an interim application before the Hon'ble High Court under Order 41 Rule 27 of CPC seeking permission to produce the will deeds said to have been executed

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by her deceased mother and sister bequeathing their shares in the suit properties and non-schedule properties in her favour. The Hon'ble High Court allowed the appeal by judgment dated 15.09.2021 and remanded the matter to this court with a direction to receive additional documents and provide opportunities to the parties to adduce evidence on the additional documents and to hear the matter and pass judgment in accordance with law. As per judgment of Hon'ble High Court, the matter was restored by this court to its original number. Thereafter, plaintiff filed present application seeking permission to amend the plaint. The proposed amendment sought to be incorporated by the plaintiff is as under:

1. In the cause title of the plaint before the names plaintiff and of defendant they shall be started with numbers "(1)" each.

2. In the Cause title of the plaint i.e. at Claim, after the words "Declaration and injunction" the words "Partition and separate possession" is to added.

3. In the suit schedule after the properties at S. Nos 1 to 6 the following properties may be added

"(7) Half share in cattle shed bearing No 1-3-125/1 of Gurmitkal.

(8) Shop bearing No 1-7-56 of Gurmitkal village.

(9) House bearing No 1-3-139/1 of Gurmitkal."

4. After plaint Para No 4, the following sub-Paras may be added,

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4.(A). "Alternatively the suit of the plaintiff is also for the relief of declaration and injunction declaring that the plaintiff has become the owner of suit schedule properties at SL. Nos 1 to 5 and 7 to 8 as per the registered "WILL" executed by the deceased mother by name Amrutabai dated 28-11-2001 and "WILL" executed by plaintiffs' deceased sister Jugnabai dated 29-11-2001 and also for the relief of partition and separate possession of her 1/15th share in the suit schedule property at SI. No 6.

4.(B) The suit schedule property at SI. No 6 was allotted to this plaintiff and her deceased mother and her deceased sister jointly in their family partition. The plaintiff is having 1/3rd her absolute share therein. And the share of her deceased sister Jugnabai, who died on 19-09-2003, devolves on her mother Amrutabai. Hence Amrutabai was having 2/3rd share in that property. The mother of the plaintiff who was having 2/3rd share in the property at Si.No 6 i.e. R S No 319/A of Gurmitkal died intestate in so far as this property is concerned. And it devolves her children and her grand children. The plaintiff is having 1/5th share in the same for which she is entitled for partition and separate possession of her share and rest of the 4/5th shares, 1/5th share each devolves on defendant No 1. Lachiram, Uma, legal heirs of Radhabai and legal heirs of Gopalsingh.

4 (C) The elder sister of the plaintiff by name Jugnabai, pre-deceased her mother Amrutabai. Jugnabai died on 19-09-2003 and was unmarried. She allotted with certain properties at the time of family partition along with her mother and present plaintiff. Said Jugnabai executed a "WILL" in favor of the plaintiff on 29-11-2001 and in so far as property at SI. Nos 4 and 5 of the suit schedule. Rest of her rights over the property allotted to her jointly during

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partition devolves on her mother by name Smt. Amrutabai. Said Amrutabai died on 21-08-2008. The mother of the plaintiff has bequeathed her all properties owned at that time and of the property which owns and acquires in future in favor of the plaintiff under registered "Will" dated 28-11-2001. Hence the plaintiff has become the owner of the suit schedule properties at Sl. Nos 1 to 5 and 7 to 8 on the bases of registered "WILLS" registered at Sub-Registrar Muddebihal.

6. In plaint Para No 8 first Para a sub-Para be added.

"Alternatively for the relief of declaration and consequential relief of injunction, that the plaintiff is the absolute owner of suit properties at SI. Nos 1 to 5 and 7 to 8 as per the registered "WILLS" executed by the deceased mother and the deceased sister of the plaintiff of this suit and for the relief of declaration and perpetual injunction that the plaintiff is the absolute owner in possession of 1/3rd share in the property at Si. No. 6, the suit claim is valued on the bases of their respective assessments. The 12 and 1/2 times of the assessment of landed property at SI. Nos 1 to 5 and of 1/3rd out of suit schedule property at SI. No. 6 is Rs 297=75 (which is rounded to Rs 300=00) and the suit house property at SI. Nos 7 to 8 are valued at Rs 10,000=00 each. Hence the entire suit properties are valued at Rs 30,300much and as per section 24 (B) of Karnataka Court Fees and suit valuation Act 1958 Court fee on Rs 30,000=00 is paid herewith. And for the relief of partition and separate possession of 2/15th share in the suit property at S. No. 6 is concerned, the assessment of the said land is Rs 08=-80 and 12 1/2 times of the same is much less than Rs 3.000=00, as such as per section 35 (2) Of KCF and SV Act 1958, court of Rs 15=00 is paid herewith. Thus in all court of Rs 1,540 is paid herewith.

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For the purpose pecuniary jurisdiction and for lawyer's fees the suit claim is valued at same.

7. In the Prayer column the Prayer No"1" may be substituted by the following Paras.

I) That a decree may be passed declaring that the plaintiff has become the owner of the Schedule properties at SL. Nos. 1 to 5 and 7 to 8 as per the "WILLS" executed by her deceased mother Amutabai and the sister Jugnabai.

i(A) Further it be declared that the plaintiff is owner of the property at SI. No 6 to the extent of her 1/3rd share as per the family partition.

i.(B) A decree may be passed in favor of the plaintiff awarding 2/15t share in schedule property at SI. No. 6 by way of partition and separate possession by meets bonds.

14. Admittedly, the plaintiff has filed suit for declaration of title with consequential relief of injunction claiming title on the ground that the suit schedule properties were allotted to the joint share of the plaintiff, her deceased mother and deceased sister in an oral partition held in the year 1992. The plaintiff claimed that, as her mother and sister have died, she has become the absolute owner of the suit properties. With this claim, the plaintiff fought the suit and regular appeal and suffered decree at the hands of Hon'ble First Appellate Court in RA No.19/2015. Thereafter, for the first time before the Hon'ble High Court of Karnataka, the plaintiff came up with two will

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deeds said to have been executed by her deceased mother and sister bequeathing their shares in the suit schedule properties and non-suit schedule properties in her favour. Accordingly, the matter came to be remanded to this court with a direction to receive the additional documents and evidence of both parties on the additional documents and pass judgment in accordance with law. Therefore, the plaintiff is now claiming title to the properties on the strength of her own 1/3rd joint share and the alleged will deeds executed by her deceased mother and sister in respect of their 2/3rd shares in the suit schedule properties.

15. As the Hon'ble High Court has directed this court to receive the will deeds sought to be produced by the plaintiff, this court is of the opinion that, the proposed amendment insofar as plaintiff's claim on the basis of will deeds is concerned has to be allowed. The plaintiff cannot be made to proceed with the suit without there being necessary pleadings with regard to the will deeds. Further, the plaintiff states that she was not aware about the alleged will deeds at the time of filing the suit and she came to know about the same only after filing of Regular Second Appeal before the Hon'ble High Court of Karnataka. As such, the proposed amendment insofar as it

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relates to the claim of the plaintiff on the basis of will is concerned cannot be said to be hit by proviso appended to Order 6 Rule 17 of CPC.

16. However, the plaintiff is travelling much further beyond her claim of title on the basis of will as she is intending to claim the relief of partition and separate possession of her share in the 2/3rd share of her deceased mother and sister in suit item No.6 land bearing Sy.No.319/A measuring 05 acres 33 guntas situated at Gurumitakl. The plaintiff states that her mother and sister have died intestate insofar as the said suit item No.6 is concerned and therefore she being one of the heir is entitled to claim share in the 2/3rd share of her deceased mother and sister in the said suit land.

17. It is relevant to mention that this claim of the plaintiff has nothing to do with the will deeds discovered by her. From the very date of filing of the suit the plaintiff had the opportunity of claiming partition in respect of the shares of her deceased mother and sister. However, the plaintiff without choosing to seek the relief of partition has fought the suit at all levels till the Hon'ble High Court pressing her claim of absolute title over the suit lands on the principle of survivorship. As

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such, this court is of the opinion that, the proposed amendment is clearly hit by proviso appended to Order 6 Rule 17 of CPC. Further, if the proposed amendment regarding the relief of partition is allowed, the same would certainly change the nature of the suit and thereafter, all the family members will have to be made parties to the present suit, fresh issues will have to be framed in the suit and question of bringing all family properties under single hotch-potch would also arise. In other words, allowing the proposed amendment with regard to the relief of partition would amount to re-trial of the suit. Therefore, this court is of the opinion that, the present application insofar as relief of partition is concerned deserves to be dismissed.

18. In view of above discussion, point under consideration is answered partly in the Affirmative holding that the application deserves to be partly allowed insofar as the plaintiff's claim based on will deeds is concerned and deserves to be dismissed insofar as the rest of claim is concerned.

19. **POINT NO.2:** In view of the above discussion, the following;

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**ORDER**

IA.No.8 filed by the plaintiff under Order 6 Rule 17 of CPC is hereby partly allowed insofar as the proposed amendment relating to plaintiff's claim on the basis of will deeds is concerned.

The rest of the application relating to plaintiff's claim for additional relief of partition and separate possession is hereby rejected.

In order to avoid confusion in carrying out amendment in the plaint, the proposed amendment in respect of which the application is allowed is provided in a schedule appended to this order.

The plaintiff is directed to amend the plaint as per the schedule herein and to furnish amended plaint along with fresh valuation slip on or before the next date.

No order as to costs.

(Dictated to the stenographer, transcribed by him, transcript corrected by me and then pronounced on this the 05th day of December, 2024.)

(ARUN CHOUGULE)
CIVIL JUDGE & JMFC,
YADGIRI.

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SCHEDULE

1. In the cause title of the plaint before the names plaintiff and of defendant they shall be started with numbers "(1)" each.

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3. After plaint Para No 4, the following sub-Paras may be added,

4.(A). "Alternatively the suit of the plaintiff is also for the relief of declaration and injunction declaring that the plaintiff has become the owner of suit schedule properties at SL. Nos 1 to 5 and 7 to 8 as per the registered "WILL" executed by the deceased mother by name Amrutabai dated 28-11-2001 and "WILL" executed by plaintiffs' deceased sister Jugnabai dated 29-11-2001.

4 (B) The elder sister of the plaintiff by name Jugnabai, pre-deceased her mother Amrutabai. Jugnabai died on 19-09-2003 and was unmarried. She allotted with certain properties at the time of family partition along with her mother and present plaintiff. Said Jugnabai executed a "WILL" in favor of the plaintiff on 29-11-2001 and in so far as property at SI. Nos 4 and 5 of the suit schedule. Rest of her rights over the property allotted to her jointly during partition devolves on her mother by name Smt. Amrutabai.

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Said Amrutabai died on 21-08-2008. The mother of the plaintiff has bequeathed her all properties owned at that time and of the property which owns and acquires in future in favor of the plaintiff under registered "Will" dated 28-11-2001. Hence the plaintiff has become the owner of the suit schedule properties at Sl. Nos 1 to 5 and 7 to 8 on the bases of registered "WILLS" registered at Sub-Registrar Muddebihal.

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5. In the Prayer column the Prayer No"1" may be substituted by the following Paras.

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I) That a decree may be passed declaring that the plaintiff has become the owner of the Schedule properties at SL. Nos. 1 to 5 and 7 to 8 as per the "WILLS" executed by her deceased mother Amutabai and the sister Jugnabai.

I(A) Further it be declared that the plaintiff is owner of the property at SI. No 6 to the extent of her 1/3rd share as per the family partition.

**(ARUN CHOUGULE)
CIVIL JUDGE & JMFC,
YADGIRI.**