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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF APRIL 2007

BEFORE

THE HON'BLE MR.JUSTICE H.N.NAGAMOHAN DAS

W.P.NO.11342/2005 (GM-CPC)

BETWEEN:

1. Sri Puttappa,
S/o late Sri Thippanna,
Aged about 75 years,
Agriculturist,

2. Sri Balindrappa,
S/o late Sri Thippanna,
Aged about 73 years,
Agriculturist,

Both are resident of Yalasi Village,
Kasaba Hobli, Soraba Taluk,
Shimoga District.

....Petitioners

(By Sri Sangameshwaraiah K., Advocate for
Sri T.S.Mahesh Murthy, Advocate)

AND:

Sri Basavaryappa,
S/o late Sri Thippanna,
Aged about 78 years,
Agriculturist,
Resident of Yalasi Village,
Kasaba Hobli, Soraba Taluk,
Shimoga District.

....Respondent

(By Sri S.A.Sameer, Advocate)



This writ petition is filed under Article 226 and 227 of the Constitution of India praying to quash the order dated 26.10.2004 passed in O.S.No.65/1999 on the file of the Civil Judge (Sr.Dn.), Sagar vide Annexure 'B' and etc.

This writ petition coming on for preliminary hearing in 'B' group this day, the Court made the following;

ORDER

The petitioners filed O.S.No.65/1999 against the respondent for a declaration that respondent is not the adopted son of late Dyavappa, to declare the partition deed dated 12.3.1955 as null and void and for partition of the schedule properties. After framing of issues, the petitioners filed I.A.No.2 under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint and to incorporate two additional paras as para-6(a) and paragraph-9(11). The trial court after hearing both the parties passed the impugned order rejecting I.A.No.2 on the ground that the proposed amendment will change the nature of the suit. Hence this writ petition.

2. The proposed amendment is only an alternative prayer and the same will not change the nature of the



suit. Under the proposed amendment, the petitioners are not taking away the admission made by them which has enured to the benefit of the respondent. In order to resolve the entire controversy between the parties, the proposed amendment is necessary. The reasoning of the trial court that the proposed amendment will change the nature and character of the suit is factually incorrect.

3. There are certain laches on the part of the petitioners in filing I.A.No.2 at a belated stage. On account of delay and laches on the part of the petitioners, some inconvenience is caused to the respondent and the same requires to be compensated by levying some costs.

4. For the reasons stated above, the following

ORDER

- I. The writ petition is allowed.
- II. The impugned order dated 26.10.2004 on I.A.No.2 in O.S.No.65/1999 passed by the Civil Judge (Sr.Dn.), Sagar is hereby quashed.



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III. I.A.No.2 is allowed subject to the condition the petitioners paying a sum of Rs.3,000/- to the respondent within six weeks from today.

IV. The petitioners to amend the plaint before the trial court.

V. The respondent to file additional written statement, if any before the trial court.

VI. The trial court is directed to expedite the matter. Ordered accordingly.

Sd/-
Judge

Ets*