

KABG040006872012



ORDER ON I.A.No.XIII

This application is filed by the plaintiffs Under Order VI Rule 17 of Code of Civil Procedure seeking permission of the court to amend the plaint as per schedule of amendment annexed to the application as hereunder:

7-A) It is further respectfully submitted that during pendency of the top noted suit the defendant No.1 Shri. Jyoti @ Jyotiba Bhima Santaji, during his life time, taking advantage of his name appearing in the record of rights pertaining to suit agriculture land R.S.No.605/24 (old No.605/2A), admeasuring 1 Acre 28 Guntas (including 5 guntas pot kharab), executed alleged gift deed dated 9/4/2019 in favour of Shri Laxman Bhima Santaji and Shri Devaraj Krishna Santaji without any absolute and exclusive rights over the said land. This alleged gift deed dated 9/4/2019 is executed during pendency of the suit that too after the matter being posted for cross examination of PW-1 and for defence evidence. Later on defendant No.1 died on 12/10/2019. All the

Lrs of deceased defendant No.1 were already on record. The alleged gift deed dated 9/4/2019 is null and void and not binding on the legitimate share of the plaintiffs and no rights are accrued in favour of Shri. Laxman Bhima Santaji and Shri Devaraj Krishna Santaji by virtue of alleged gift deed dated 9/4/2019. The names of donees have been entered in the concerned record of rights illegally and unauthorisedly by virtue of alleged gift deed dated 9/4/2019 and the said entry is illegal and unauthorized one and the same has no sanctity in the eye of law. It is submitted that the execution of the alleged gift deed and changes in the record of rights are the subsequent events.

10 [i-a] The alleged gift deed dated 9/4/2019 executed by the defendant No.1 in favour of Shri. Laxman Bhima Santaji and Shri Devaraj Krishna Santaji in respect of the suit agriculture land R.A.No.605/24 (Old No.605/2A) admeasuring 1 Acre 28 Guntas (including 5 Guntas pot kharab), is null and void and not biding on the legitimate share of the plaintiffs.”

It is stated in the affidavit annexed to the application that the plaintiffs have filed this case for the relief of partition and separate possession in respect of suit schedule ‘A’ and ‘B’ properties. Plaintiff No. 1 has been examined Pw-1 and despite sufficient opportunities, the defendants did not come forward

to either to cross examine Pw-1 or to lead their evidence. Meanwhile, the defendant no. 1 taking advantage of revenue records standing in his name executed gift deed in favour Laxman Bhima Santaji and Devaraj Krishna Santaji on 9/4/2019 with respect to R. S. No. 605/24 (old No. 605/2A) . Further, the defendant No. 1 died on 12/10/2019. The alleged gift deed came into existence after examination of Pw-1. The proposed amendment will not change the nature of the suit and no loss or hardship will be caused to the other side if the application is allowed. Hence prayed to allow the application.

2. Counsel for defendant No. 3 and 4 submits no objections to allow the application. Counsel for defendant No. 2, 5 and 6 failed to file objections even after providing sufficient opportunities. As such objections of defendant No. 2, 5 and 6 is taken as Nil.

3. Perused the materials available on record. On perusal of the same, it reveals that the Plaintiffs have filed this suit for the relief of partition and separate possession against the defendants and during the pendency of the suit, the gift deed has come into existence. Even after exercise of due diligence, the amendment could not be made at the earlier stage. As such this court opines that if the proposed amendment is allowed, it will neither alter the nature of the suit nor change

the subject matter of the suit. The burden of establishing the facts as stated in the proposed amendment is upon the Plaintiffs. In order to avoid multiplicity of proceedings and for proper adjudication of the matter in controversy, the present application filed by the Plaintiffs needs to be allowed. Hence, the court is of the opinion that the reasons assigned in the application as well as materials available on record is sufficient and acceptable and in the result, the court proceeds to pass the following:

ORDER

The I.A.No.XIII filed by the Plaintiffs
Under Order VI Rule 17 of CPC is hereby
allowed.

Counsel for plaintiffs is directed to
carry out the amendment and to file
amended plaint.

Call on: **26.10.2021**

II Addl. Civil Judge & JMFC
Belagavi.