

KABG040006972013



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 23RD DAY OF NOVEMBER-2024

ORIGINAL SUIT NO.294/2013

PLAINTIFFS :

1)	Shri. Kallappa Sripati Kulam, Age : 44 years, Occ : Agriculture, R/o : Baknoor, Tal : & Dist : Belgaum, and another.
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Vs.

DEFENDANTS :

1)	Smt. Neeta Suresh Kinayekar Age : 35 years, Occ : Agriculture, R/o : Hindalga Village, Tal : & Dist : Belgaum, and others.
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PARTIES TO I.A.NO.XXXVIII**Applicants/Plaintiffs :**

1)	Shri. Kallappa Sripati Kulam & another.
	(By Shri. G. R. Soner, Adv.)

Vs.**Opponents/Defendants :**

1)	Smt. Neeta Suresh Kinayekar & others.
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1.	Provision under which application is filed	U/O.VI Rule 17 of C.P.C.
2.	Relief sought for	Amendment of plaint
3.	The date on which the application is filed	06.08.2024
4.	Number of application	XXXVIII
5.	The date on which the objections are filed by different opponent	--
6.	The date on which the orders were passed on the said application.	23.11.2024.

**ORDERS ON I.A.NO.XXXVIII FILED BY PLAINTIFFS U/O.VI
RULE 17 OF CODE OF CIVIL PROCEDURE**

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This application is filed U/O. VI Rule 17 of C.P.C. by the plaintiffs seeking amendment of plaint as stated in the application. Plaintiffs have sought to amend the plaint as follows :

1) After Para No.7 of the plaint to add the following paragraph as Para No.7(A).

'It is further submitted that during pendency of present suit, defendant No.11 has sold the suit property bearing R.S.No.4/8 area 02 Acres 6 Guntas to defendant No.18 under registered sale deed dated 06.06.2014 for sale consideration amount of Rs.3,62,000/- under document No.BEL-1-02879/2014-15. Infact, the defendant No.11 was not holding any valid title and possession in the suit land R.S.No.4/8 but defendant No.1 has executed a bogus and illegal sale deed in respect to land R.S. No.4/8 in favour of defendant No.18. This is clearly show that the defendant No.11 have no regard to law and knowingly that there is suit pending, he had alienated the joint family suit land R.S.No.4/8 to defendant No.18 and hence this sale deed is not binding on the present plaintiffs. This sale deed is void and without consideration as the plaintiffs are not consenting parties. Further, the defendant No.18 is not in possession of the said land

and recitals in the sale deed are false and bogus and denied by the plaintiffs.'

2) In prayer column, to add the new prayer as Prayer B(a).

'B(a) Decree may be passed, declaring that alleged sale deed bearing document No.BEL-1-02879/2014-15, dated 06.06.2014 in respect to Sl.No.8 in schedule 'A' property i.e., R.S.No.4/8 of Baknoor Village, Tal : Belagavi is illegal, void and the same is not binding on the plaintiffs to the extent of their legitimate share.'

2. In the affidavit annexed to the application, it is stated that the plaintiffs have filed the present suit seeking the relief of partition and separate possession and the case is posted for defendant evidence. That the defendant No.11 by colluding with defendant No.18 has sold the suit property i.e., R.S.No.4/8 in favour of defendant No.18 and as such defendant No.18 has been recently impleaded as party to this suit. Hence, in order to bring the correct facts before the Court the proposed amendment is very much necessary. The sale deed having been executed after filing of the suit, it is subsequent event and as such in order to avoid multiplicity of proceedings also the proposed amendment deserves to be allowed. The proposed amendment will not

change the nature of suit. On these grounds, the plaintiffs have prayed to allow the present application.

3. Per contra, the defendants have not filed objection to the said application.

4. On the basis of said application, the following points arise for my consideration :

- i) Whether the applicant has made out grounds to allow the application ?
- ii) What order ?

5. My answer to above points are as under :

Point No.1 : In the Affirmative.

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

REASONS

6. Point No.1 : The plaintiffs have filed the present suit seeking the relief of partition and separate possession and declaration to declare the sale deeds dated 31.10.2002, 17.11.2012, 15.01.1997 and 08.01.1998 in respect of suit land are illegal and not binding on the plaintiffs. Now the suit is at the stage of cross-examination of DW-1 and the plaintiffs have filed the present application seeking few amendments to the plaint in order to bring few facts to the knowledge of the Court and to

include the same in the plaint and the said facts are with respect to the sale transaction that has taken place in the year 2014 subsequent to the filing of present suit. Per contra, the defendants have not filed objection to the said application.

7. Under Order VI Rule 17 of C.P.C., Court's discretion to grant permission for a party to amend his pleading can be exercised, firstly, where no injustice is done to other side and secondly, the amendment being necessary for the purpose of determining the real question in controversy between the parties also keeping in view the proviso under Rule 17 of Order VI of C.P.C. Even after commencement of the trial, the amendment can be permitted, if it is shown that inspite of due diligence, the applicant could not have raised the matter, earlier to the stage of commencement of the trial.

8. The proposed amendment is sought after commencement of trial, but however it is pertinent to note that this is a suit for partition and separate possession and by the proposed amendment, the plaintiffs are intending to include few plaint averments with respect to the subsequent event that has taken place after filing of present suit i.e., regarding the sale of 2 Acres 6 Guntas of land in R.S.No.4/8 which is suit property, by defendant No.11 to defendant No.18 under registered sale deed

on 06.06.2014 during pendency of this suit. In view of said subsequent event the plaintiffs are also intending to include the relief of declaration in the prayer column to seek declaration of the said sale deed as illegal and not binding on the plaintiffs to the extent of their share. The proposed amendment is necessary to adjudicate the matter in dispute between the parties finally and effectively. Since the plaintiffs are claiming that the suit property has been sold during pendency of the suit, it is for the plaintiffs to prove their case and to prove that they are entitled to the relief sought for. The proposed amendment appears to be necessary since it is with respect to subsequent event said to have been taken place in respect of suit schedule property. Hence, in order to avoid multiplicity of proceedings, the proposed amendment deserves to be allowed since it would not cause any prejudice to the other side and it would not cause any injustice to the other side, instead it will help the Court in determination of dispute between the parties finally and effectively. Accordingly, I answer **Point No.1 in the Affirmative.**

9 Point No.2 : For the above said discussion on Point No.1, I proceed to pass the following :

ORDER

***The application i.e., I.A.No.XXXVIII
filed by plaintiffs U/O. VI Rule 17 of C.P.C.
is hereby allowed.***

***The plaintiffs are hereby directed to
carry out amendment and to file amended
plaint.***

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the **23rd day of November-2024.**)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**