

KABG300006122021



**IN THE COURT OF SENIOR CIVIL JUDGE,  
BAILHONGAL, AT: BAILHONGAL.**

**PRESENT:**

**Sri. Ravu Babu Chawan,**  
**B.A.LL.B (Spl.)**  
Senior Civil Judge, Bailhongal.

**O.S. No.113/2021**

Dated this the 19<sup>th</sup> Day of August 2024.

1) Sri. Shivappa Maddeppa Pujer,  
Age: 62 years, Occ: Agriculture,  
R/o: Yaradal, now at Pattihal KS,  
Tq: Bailhongal, Dist: Belagavi.

2) Sri. Chandrappa Maddeppa Pujer,  
Age: 50 years, Occ: Agriculture,  
R/o: Yaradal, now at Naikanakoppa,  
Tq: Khanapur, Dist: Belagavi.

3) Smt. Channawwa W/o Basappa Hunashikatti,  
Age: 45 years, Occ: Household and Agriculture,  
R/o: Pattihal KS, Tq: Bailhongal,  
Dist: Belagavi.

4) Sri. Balappa Maddeppa Pujer,  
Age: 42 years, Occ: Agriculture,

R/o: Yaradal, now at Pattihal KS,  
Tq: Bailhongal, Dist: Belagavi.

**..... Plaintiffs**

**(By Sri. R.S.M., Advocate)**

**Vs.**

1) Sri. Suresh Veerupaxappa Pujer,  
Age: 50 years, Occ: Agriculture,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

2) Sri. Shekar Veerupaxappa Pujer,  
Age: 55 years, Occ: Agriculture,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

3) Smt. Gangawwa Shiddappa Koujalagi  
Age: 70 years, Occ: Household,  
R/o: Murgod, Tq: Soundatti,  
Dist: Belagavi.

4) Smt. Basawwa Irappa Karigar,  
Age: 52 years, Occ: Household,  
R/o: Near Rudrakshi Math, Bailhongal  
Tq: Bailhongal, Dist: Belagavi.

5) Smt. Gangawwa Bhimappa Pujer,  
Age: 65 years, Occ: Household,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

6) Sri. Irappa Bhimappa Pujer,  
Age: 40 years, Occ: Agriculture,  
R/o: Yaradal, Tq: Bailhongal,

Dist: Belagavi.

7) Sri. Raju Bhimappa Pujer,  
Age: 38 years, Occ: Agriculture,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

8) Sri. Mahantesh Bhimappa Pujer,  
Age: 36 years, Occ: Agriculture,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

9) Smt. Rudrawwa Surappa Pujer,  
Age: 50 years, Occ: Household,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

10) Smt. Gangawwa Nagappa Devalapur,  
Age: 55 years, Occ: Household,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

11) Smt. Yallawwa Basappa Pujer,  
Age: 60 years, Occ: Household,  
R/o: Yaradal, Tq: Bailhongal,  
Dist: Belagavi.

**..... Defendants**

**(By Sri. D.S.H., Advocate for D1, D5, D6, D8)  
(D2 to D4, D7, D9 to D11: Exparte)**

**PARTIES TO IA No.II**

1) Sri. Shivappa Maddeppa Pujer  
and others

**.....Applicants/plaintiffs**

- Vs. -

1) Sri. Suresh Veerupaxappa Pujer,  
and others

**.....Opponents/defendants****ORDER ON I.A.No. II**

This is an application filed under Order VI Rule 17 of CPC by the plaintiffs seeking permission for amendment of the plaint by adding para-4A as follows:

“ 4A) The father of the plaintiffs Madeppa, during his lifetime he manages to perform the worship of Human deity whenever his terms comes. After his death Veerupaxappa the father defendant No. 1 to 4 refused to give performing delay pooja of to terms comes. plaintiffs, assign reason that they were residing in different village. The father of plaintiffs Madeppa had not executed registered deed of Hakku bit patra/relinquishment deed in favour of his brother Veerupaxappa on 24/05/1982. Deceased Madeppa was not signatory to the sale deed the alleged Hakku bit

patra /relinquishment deed was not at all acted upon and no mutations were certified on the basis of this bogs deed. The plaintiffs No.1 has not signatory has not put his signature as attesting witness to the said alleged deed of Hakku bit patra/relinquishment deed. The said deed was created by the 213 father of defendant No. 1 to 4 Veerupaxappa. The said deed is not at all binding on the share of plaintiffs the said deed was created by deceased Veerupaxappa to grab the share of his brother Madeppa the alleged deed has not created any title to deceased Veerupaxappa nor his LR.s. The alleged Hakku bit patra/relinquishment deed is bogs, created and fabricated document by the deceased Veerupaxappa hence the said documents is not binding on the plaintiffs share.”

2. In the affidavit annexed to the IA it is averred by plaintiff No.1 that the proposed amendment is essential for proper adjudication of the suit. By allowing amendment nature of the suit will not get changed. No loss of prejudice will be caused to the defendants. Hence prayed for allowing the IA.

3. On the other hand, the Advocate for defendant Nos.1, 5 and 6 has filed objections to the IA contending that the above IA is filed by the plaintiffs at belated stage and the same is not maintainable both on facts and law. The plaintiff intends to seek additional Para and it will lead to change in the nature of suit. Hence it is prayed for dismissal of IA.

4. Heard the learned counsels for both sides. I have perused written arguments submitted by learned counsel for plaintiffs and counsel for defendant No. 1, 5 and 6.

5. The following point arises for my consideration:

1) Whether the I.A. No. II filed U/o. VI Rule 17 of C.P.C is deserves to be allowed?

2) What order?

6. My findings on the aforesaid point is in affirmative for the following:

Point No.1 : In the affirmative,

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

### **REASONS**

7. **Point No.1:-** This is suit for partition and separate possession. The plaintiffs intends to contend that suit Hakku Bitt Patra relinquishment deed dated 24-05-1982 bogus and created by the father of the defendant No. 1 to 4 Veerupaxappa and the same is not at all binding on the share of the plaintiffs. Admittedly evidence in this suit is not yet commenced. Under order VI rule 17 of CPC, amendment to pleading must be liberally considered prior to commencement of trial. No doubt by way of amendment the plaintiffs are introducing new fact, but the contentions raised at present by the plaintiffs is required to be proved by them. In the circumstance amendment sought to

para-4 and insertion of para-4A to the plaint appears to be justifiable. This apart, still there is no commencement of the evidence of the plaintiffs and such of the circumstances, the proviso of Order VI Rule 17 is not hurdle to amend the pleadings.

8. Learned counsel for defendant Nos.1, 5 and 6 has relied on decision of Hon'ble Apex Court reported in **2024(1) KCCR 869(SC) (Basavaraj V/s Indira and others)** wherein, it is held as follows:

*" A CIVIL PROCEDURE CODE, 1908-Order 6, Rule 17 Proviso-Application to amend plaint-belated stage-The court held that the action of High Court is not proper and correct"*

9. In the aforementioned decision, the Hon'ble Apex Court has observed that, the application was filed when suit was at the fag end seeking amendment of the plaint to add prayer for declaration that an earlier compromise decree was null and void is not

maintainable. As far as the law declared in the aforementioned decision is concerned, there cannot be any quarrel at all. However, the question would be, whether the proposed amendment in respect of the alleged relinquishment is not binding on the shares of the plaintiffs will change the nature of the suit or original cause action. I have carefully gone through the entire proposed amendment and it is noticed that the proposed amendment will not change the nature of the suit and original cause of action. Moreover, this application is filed before commencement of the trial. In that view of the matter, in my humble opinion, the ratio laid down in the aforesaid decision is not applicable to the facts and circumstances of this case. Accordingly, in my opinion, the amendment prayed by the plaintiffs is just proper for the adjudication of the entire dispute between the parties. For the aforesaid

reasons the present IA is deserves to be allowed.

Accordingly point No.1 is answered in affirmative.

10. **Point No.2:-** In view of my finding given to point No.1, I proceed to pass the following:

**ORDER**

I.A.No. II filed under Order VI Rule 17 of CPC is hereby allowed on cost of Rs.1000/- payable to contesting defendants only.

The plaintiffs are permitted to amend plaint.

Call on for amendment and furnishing amended plaint by 30-08-2024.

(Dictated to the stenographer on computer system, corrected by me and pronounced in the open Court on this the 19<sup>th</sup> day of August, 2024)

**(Sri. Ravi Babu Chawan)**  
**Senior Civil Judge, Bailhongal.**

