



Present : **Sri. Nagesh Patil,**
 B.Com.,LL.B.
 II Addl. Civil Judge & JMFC,
 Chikodi.

Original Suit No.137 of 2013

1. Smt. Yamanakka W/o. Shri[ati Karade,
Age: 57 years, Occ: Agriculture &
Householdwork, R/o: Examba,
Tq: Chikodi, & another

(By Shri. D. B. K, Advocate)

1. Smt. Akkatai W/o. Gurupad Karade,
Age: 55 years, Occ: Agriculture
Household work, R/o: Examba,
Tq: Chikodi & others.

Parties To I.A.10

1. Smt. Vijaya W/o. Ravasab Tharakar,

-Vs-

Opponents/Ori. Defendants:

1) Smt. Akkatai W/o. Gurupad Karade,

i	Provision under which the application filed	U/O. VI Rule 17 R/W Sec.151 of CPC
ii	Relief sought for	Amendment of plaint
iii	The date on which the application is filed	28-08-2023
iv	Number of the application	I.A.No.10
v	The date on which the objections are filed by different opponents	04-09-2023
vi	The date on which the orders were passed on the said application	16-01-2024

**ORDERS ON I.A.NO.10 FILED UNDER ORDER
VI RULE 17 R/W SEC.151 OF CPC**

The applicant/Plaintiff has filed this application for amendment of plaint.

Proposed Amendment in Plaint.

“5A) This being the facts by taking disadvantage of illegal entry of defendant No.2 by name Tukaram without knowledge and behind the back illegally alienated the 20 Gs of land in favour of defendant No.6 and 20 Gs of land in favour of defendant No.7 and 8 through registered sale deed which are not binding on

the plaintiff No.2. So also it is submits that to give harass to the plaintiff No.2, The defendant No.6 has executed illegally gift deed in favour of defendant No.9.. So same alleged gift deed is not binding on plaintiff No.2. ”

2. In support of the application GPA holder of plaintiff No.2 has filed an affidavit, wherein stated that, the plaintiff No.2 has filed the present suit against the defendants for declaration and consequential relief of injunction in respect of suit schedule property, he has filed the present application seeking amendment of the plaint by adding the para No.5A as stated in the application. The proposed amendment may kindly be added after para No.5 of the plaint as 5A, this amendment is very necessary to dispose of the matter. If the accompanying application is allowed no hardship or inconvenience will be caused to the defendants, on the contrary if the I.A. is not allowed. He will be put into loss or hardship and the balance of inconvenience is lies in my favour. Hence prays to allow the application.

3. On the other hand counsel for the defendant No.6 has filed objection to the application. In the objection

contended that, The application is misconceived, untenable and the contents of the affidavit filed in support of application are false, baseless and self serving, the plaintiff specifically deny the same in toto. That, the contents of affidavit in support of L.A. is all are false, frivolous, vexatious, incorrect and far away from the truth and hence the application I. A. No. 6 under Order VI Rule 17 RW. Sec. 151 of CPC for framing of additional issue is deserves to be dismissed. That earlier the defendant No.6 is not party in the suit he was added as party in the suit as per order on I.A. dated 14/12 / 2020 that prior to filing of this suit the plaintiffs have well aware about the fact that the defendant No. 6 has purchased the property earlier to the filing of this suit. In spite of knowledge the plaintiffs have not bring this fact before this Hon'ble court. It is submitted that defendant/applicant has filed this applications with a malafide intention to prolong/delay the early conclusion of the matter. The present case is posted for cross of PW-1 and dates has been given for defendant to cross examination but in spite of this the plaintiffs have filed this application the with malafide intention to prolong the matter. Further the affidavit accompanying with I.A. does not disclose any reason for filing the application after lapse of long time.

Further the IA. Filed after the filing of written statement by the defendant No. 6 with intention to fill up the gap and lacuna. Hence the applications filed by the applicant/plaintiffs is liable to be dismissed. Thus the attitude of plaintiffs clearly shows that they have filed the applications I.A. No.6 with ulterior motive to prolong the matter and to waste valuable time of this Hon'ble court therefore the I.A. No. 6 filed by the applicant/plaintiff is liable to be dismissed. The applicant/defendant had made false allegations in affidavit filed in support of his application. That, there are no merits in the I.A. No. 6 and affidavit nor there is any truth in it. Further the application filed by the applicant at this belated stage is not maintainable. Hence on all these grounds prays to dismiss the application.

4. Heard arguments on both sides.

5. On hearing both sides the points for Consideration of this court is as under:

POINTS

- 1) Whether proposed amendment is just and necessary for determining the real

questions in controversy between the parties?

2) What Order?

6. My answer to the above points are as under.

Point No: 1: Affirmative.

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

:: REASONS ::

7. **Point No.1:-** The plaintiffs have filed the suit for declaration and injunction in respect of suit property against defendants contending that, the husband of plaintiff was the original owner of the land R.S. No. 384 totally measuring 15 As-13 assessed at Rs 68-40 Ps situated at Examba village in Chikodi Taluka. It is self acquired property of husband of the plaintiff No.1, as it is granted by the Government. Accordingly he was in use and enjoyment of the same. The husband of the plaintiff No.1 and husband of defendant No.1 were own brothers, and were separated long back i.e prior to 1974, but husband of plaintiff No.1 gave 2As-00Gs. Of land towards South East corner to the husband of defendant No.1 for cultivating and use and enjoyment of the same as he is own brother of husband of plaintiff No.1. Therefore the husband of defendant No.1

in use and enjoyment of the same. But the husband of the defendant No.1 and father of the defendant No.2 to 5 had no authority nor he was having any right, title or interest in the above said suit survey number as owner. The husband of defendant No.1 was cultivating 2 acres of and in land in R.S.No. 384 out of measuring 15 As-13Gs. The plaintiffs submits that, the Government of Karnataka introduced Karnataka Land Reforms A 1964, and cultivating the land as tenant as on 01-03-1977 they were required to file Form No.7 for granting occupancy rights in their favour. Accordingly the husband of the defendant No. 1 filed Form No.7 in the year 1976. So also one Pundalik Rama Karade filed Form No.7 in year 1974 as he was also cultivating the Land as a tenant, so the land Tribunal Chikodi as per order No. KLR/SR/Examba 156/457 dtd. 21-10-1981 granted the occupancy rights in favour of husband of defendant No.1 to the extent of 2As-00Gs of land and one Shri. Pundalik Rama Karade as he was also cultivating to the extent of 5As-24 Gs in land R.S.No.384, out of measuring 15As- 13Gs. The husband of the plaintiff No:1 and father of the plaintiff No.2, for their family necessities have executed the sale deed to the western side of 6 Acres of land in favour of one Smt. Indrabai Bhupal

Shingade for a consideration of Rs. 18,000/- in the year 1972. Accordingly the name of the purchaser is entered in the R of R. Further in the year 1989 the members of Singade family has executed the sale deed in favour of Smt. Avakka Walake, through different sale deeds. Accordingly, her name and her sons' names are appearing in the R of R to the extent of totally 06 Acres. So, after alienation and granting occupancy right in favour of husband of defendant No.1 and one Pundalik Karade, the land is remained to the extent of 01 Ac 29 Gs which is in actual possession and enjoyment of the plaintiffs in suit R.S.No.384/1 i.e. suit property. The husband of the defendant No.1 was working as a Gram Sahayaka under the supervision of the Village Accountant. Examba, so he has taken disadvantage of the post and manipulated the records under such circumstance, in the year 1980, illegally and high handedly and behind the back of the husband of the plaintiff No.1 got created the Wardi and illegally got passed the Mutation Entry No.9911 by colluding with the Village Accountant, Examba and got entered his name to the Record of Right extract of 02 Acres of land which is not in existent to that extent. Hence, it is not binding on the plaintiffs. This being the fact, without obtaining prior

permission from the competent authority as provided under Karnataka Land Reforms Act. The defendants No.1 to 3 have executed the registered Sale Deed illegally and unauthorizedly in favour of one Anil Devappa Khot of Examba for a consideration amount of Rs.1,66,000 / - to the extent of 01 Acre on 21/6/2007 . Accordingly, the name of the purchaser is entered in the Record of Rights and he is in actual possession and enjoyment of the said 01 Acre of land. Further, the defendant No.2 only, has executed the registered Sale Deed on 09/01/2012 without obtaining prior permission from competent authority as provided under the Karnataka Land Reforms Act illegally and unauthorizedly to the extent of 01 Acre of land for a consideration of Rs.2,42,000/-. Hence, the defendants have alienated their share of 02 Acre land, which is granted by the Land Tribunal, Chikod. Hence, there is no share is remained in the land R.S. No 384/1. But in the Revenue Records the name of the defendant No.1 and 2 are Continued to the extent of 01 Acre each in the present record of rights on the basis of bogus and illegal mutation entry which is certified in the year 1980. But in fact, the defendants have no any right, title or interest over the land R.S.No.384/1 of Examba village and they are not in actual possession and

enjoyment of the same. Due to oversight of the Revenue Authorities, the name of the husband of plaintiff No.1 and father of the plaintiff No.2 is wrongly entered along with one Pundalik Rama Karade. But in fact, the said Pundalik Rama Karade is absolute owner in possession to the extent of 05 Ac 24 Gs and he is raising Sugarcane and other commercial crops in his land. The plaintiffs are innocent and illiterate persons. The defendants are taking disadvantage of innocence of the plaintiffs and are trying to disturb the peaceful possession of the plaintiffs on the basis of illegal M.E.No. 9911 of Examba village. Thereafter, the plaintiffs are rushed to the Revenue Authorities and obtained the documents, then they came to know that the defendants No.1 and 2 have got entered their names to the record of rights on the basis of illegal ME No.9911 of Examba village. Therefore the plaintiffs requested to the defendants to get delete their names from the record of rights and not to disturb the peaceful possession and enjoyment of the suit property, but defendants are not ready to hear wise won of the plaintiffs. Hence this suit.

8. Before considering the application it is just and proper to refer the "The provisions of order 6 rule 17 reads as follows:

“the court may at any stage of the proceedings allow either party to alter or amend his pleadings”.

“Further, provided that no application shall be allowed after the trial has commenced unless the court come to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial”.

As such it is settled position of law that at any stage of the proceedings the court may allow the party to amend the pleadings. even though the trial has commenced if the party has showed sufficient cause that he could not have raised the matter before the commencement of trial the court may allow the amendment.

9. Considering the above said provision of Code of civil procedure and perusal of the pleadings, On perusal of the materials placed on record it discloses that, the plaintiffs have filed this suit for Declaration and injunction in respect of suit property contending that, the defendants are taking disadvantage of

innocence of the plaintiffs and are trying to disturb the peaceful possession of the plaintiffs on the basis of illegal M.E.No. 9911 of Examba village.

10. This suit is filed for Declaration and injunction in respect of suit property and the plaintiffs filed this application for including some para of pleadings in the suit. Hence in a suit for Declaration and Injunction it is just and necessary to include the proposed amendment. So as to avoid multiplicity of proceedings, if same is allowed no prejudice will be caused to the defendants. If the above said amendment is allowed definitely it will not create any new cause of action nor it will alter the nature of the proceedings. Further, the defendants have got every right to file additional written statement and cross-examine the plaintiff on the amendment point. Hence it is just and necessary to allow the proposed amendment and the proposed amendment just and necessary for the effective and conclusive adjudication of the matter in controversy.

11. This Court relied upon the decision reported in **in (2006) 4 SCC between Rajeshkumar Agarwal and K.K.Modi and others the Hon'ble Apex Court observed as "It is well settled principle that**

amendment of pleadings having regard to order 6 Rule 17 of CPC is permissible at any stage of the suit and that includes appellate stage, if said amendment is quit necessary for proper adjudication of the lis between the parties". Hence in the present case also the evidence is yet commenced and not completed, the plaintiffs are seeking amendment of plaint to to mention some para, since this is a suit for Declaration and injunction as such the proposed amendment is just and necessary to determine question in controversy between the parties . Hence it is just and necessary to allow the application in order to shorten the litigation and to preserve, safeguard the right of the parties and to sub serve ends of justice. Hence considering the facts and circumstances of the present case and the decision cited above, it is just and necessary to allow the application . If the application is allowed no prejudice will be cause to the defendant on contrary it will assist this Court to arrive at the proper conclusion of the case. **Accordingly I answer Point No.1 in the Affirmative.**

12. Point No.2: In view of the aforesaid reasons, I proceed to pass the following:

ORDER

I.A.10 filed by the plaintiff
under Order 6 Rule 17 of C.P.C., is
here by allowed on cost of Rs.500/-

For amendment and amended
plaint.

(Dictated to the Stenographer directly on computer, typed by her,
corrected & then pronounced by me in the Open Court on this the 16th day of
January 2024).

Sd/-
(Nagesh Patil)
I Addl.Civil Judge & JMFC.,
Chikodi.