

KABG500007672023



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, GOKAK.**

BEFORE: Sri.Umesh S. Atnure,

B.Com.LL.B.(Spl)

O.S. No.396/2023

DATED THIS 05th DAY OF AUGUST-2026

Plaintiff: 1. Shri. Laxman S/o Beerappa Dabaj,
Age: 77 years, Occ: Agriculture,
R/o: Pamaladinni, Tq: Gokak.

V/s

Defendant: 1. Shri. Bhupal S/o Dudappa Hulloli,
Age: 70 years, Occ: Business,
C/o: Sachin S/o Bhupal Hulloli,
R/o: Ghataprabha, Mallapur (PG).

**PARTIES TO I.A.No.VIII FILED U/o VI RULE 17
R/W/SECTION 151 OF CPC**

Applicant: 1. Laxman S/o Beerappa Dabaj

.....Applicant/plaintiff

Vs.

Opponents: 1. Bhupal S/o Dudappa Hulloli,

.....Opponent/Defendant

ORDERS ON I.A.No.VIII FILED U/o VI RULE 17 OF CPC

The plaintiff has filed this present application U/o VI Rule 17 of CPC at IA.No.VIII praying to permit him to amend the plaint as per the proposed amendment.

2. In the accompanying affidavit, the power of attorney holder of plaintiff contended that his father was in lawful possession and cultivating of the suit property. The defendant No.1 was/is nowhere concerned to the suit property and he never in actual lawful possession of the suit property at any point of time. The deceased Bagavva W/o. Siddappa Dabaj purchased the suit property in the year 1939, her age was shown as 45 years, she ought to have born in the year 1894. In the sale deed dated 12.07.1972 of defendant in respect of suit property the age of Bagavva W/o. Siddappa Dabaj shown age 55 years, there is a difference of 35 years in actual age and age shown in the sale deed. The Bagavva W/o. Siddappa Dabaj died on 18.09.1963 itself therefore the alleged sale deed was got created by the defendant after death of Bagavva Siddappa Dabaj by impersonation which is non-est in the eye of law. Further they have not mentioned the boundaries of Southern and Northern side in the suit property through oversight and also in respect of prayer for declaration of alleged sale deed of the defendant is also not

sought by them. As such by way of this amendment they are stating the actual age of the deceased Bagavva, inserting the Southern and Northern side of the boundaries and inserting the prayer of declaration with regard to alleged sale deed in respect of the suit property which has been executed infavour defendant. If the amendment is allowed, no loss or injury will be caused to other side, if not he will be put irreparable loss and injury and amendment will not cause any surprise to the defendant. Hence, prayed to allow the application.

3. The defendant has filed his objections to this application by denying the entire contentions of the plaintiff. Further contended that now trial is commenced at this stage the plaintiff cannot be permitted to amend the plaint. Further they contended that prior to this application the plaintiff has filed IA.No.6 and 7 U/o VI Rule 17 of C.P.C for the amendment of plaint, they ought to have taken these above said contentions in IA.No.6 and 7 even though the proposed facts stated in the proposed amendment are well withing the knowledge of the plaintiff. As such the plaintiff is not diligent in conducting this case and he is having habit of filing one after the another application only to protect the matter. Further they contended that in the sale deed executed by Bagavva Siddappa

Dabaj, her age is shown as 55 years and they have denied that there is a difference of 33 years in the age of the Bagavva Siddappa Dabaj. In fact the Bagavva Siddappa Dabaj died on 18.09.1963 and they have denied that they have got created sale deed after the death of Bagavva Siddappa Dabaj. The amendment sought by the plaintiff at para No.3(a) is not at all relevant and material and the documents produced by both the parties can very well ascertain the death and birth of Bagavva Siddappa Dabaj. As such, the proposed amendment sought by the plaintiff for the relief of declaration is barred by time and further the relief of declaration of sale deed dated 12.07.1972 is also barred by limitation. Hence, the plaintiff cannot be permitted to amend the plaint by inserting the reliefs which are barred by limitation and with regard to boundaries of the suit property, in the sale deed of Bagavva of the year 1939 and their sale deed of the year 1972 no boundaries were mentioned. When in the sale deed no boundaries are mentioned the amendment sought by the plaintiff to insert the boundaries of the suit property is not maintainable one. The amendment sought by the plaintiff is not at all maintainable and relevant to decide to this case and facts stated in the proposed amendment are well within the knowledge of the plaintiff. The plaintiff purposely and

deliberately with hold the same in order to protect the matter and filed this false application. Hence, prayed to reject the application.

4. Heard both side. Perused the application and records.

5. The points that arise for my consideration are;

1. Whether the plaintiff has made out grounds to permit him to amend the plaint as per the proposed amendment?

2. What order?

6. My findings on the above points are:

POINT No.1: In the Affirmative

POINT No.2: As per final order

for the following;

REASONS

7. **POINT No.1:** When the matter is posted for plaintiff evidence at that the plaintiff has filed this present application. It is the contention of the plaintiff that the Bgavva purchased the suit property in the year 1939 at that time her age was stated as 45 years and she ought to have born in the year 1894. In the sale deed dated 12.07.1972 which has been alleged to be executed infavour of defendant by deceased Bagavva, her age is shown as 55 years.

There is a difference of 35 year of age of the Bagavva as such they are pleading the facts with regard to the purchase of the suit property by Bagavva in the year 1939 and alienation of the suit property by the Bagavva in the year 1972 infavour of defendant and also they are pleading the date of death of the Bagavva contended that the said facts were not pleaded earlier in the plaint. The facts stated in proposed amendment at para No.3(a) are pertaining to the age of deceased Bagavva and in this case the plaintiff is alleging that they are the only legal heirs of deceased Bagavva and defendants are alleging that they have purchased the suit property from deceased Bagavva on 12.07.1972. It is the contention of the plaintiff that as on the alleged sale deed dated 12.07.1972 the Bgavva was no more and defendant has got created a false sale deed. In order to decide this contentions the facts stated in the proposed amendment at para No.3(a) is just and necessary. If the plaintiff is permitted to insert the para No.3(a) in the plaint it will not cause any loss or injury to the other side and it will not change the nature of the suit nor cause of action and it will also prejudice the defendant.

8. Further the plaintiff in para No.4(a) they are pleading about challenging the ME.No.2023 of Pamaladinni village before

Assistant Commissioner, Bailhongal and they are also inserting on additional relief of declaration with regard to the alleged sale deed of defendant dated 12.07.1972 as illegal, non-est and not binding on them and also they are including boundaries of the suit property towards South and Northern side. By perusing the facts stated in the proposed amendment they clearly goes to shows that the proposed amendment will not change the nature of the suit nor cause of action. As this is a suit for declaration and injunction, the facts stated in the proposed amendment are just and necessary.

9. It is the contention of the defendant that the relief of declaration of the sale deed dated 12.07.1972 sought by the plaintiff is barred by limitation, as such the plaintiff cannot be permitted to amend the plaint. The question of limitation is a mixed question of facts and law and the question of relief cannot be decided without trial. In order to know whether relief sought by the plaintiff is well within the limitation or not will be decided only after full pledged trial hence, the contention of the defendant is not acceptable one. Further the defendant is contended that in the sale deed under which the Bagavva purchased the suit property in the year 1939 and in the sale deed under which they have purchased the suit property in the year 1972 boundaries were not mentioned. Now the

plaintiff is inserting the boundaries towards Southern and Northern side of the suit property hence, same cannot be permitted. The burden is on the plaintiff to prove the boundaries of the suit property when the sale deed of the Bagavva is a defendant no boundaries are mentioned to the suit property. By permitting the plaintiff to insert the boundaries towards South and Northern side of the suit property it will not change the nature of the suit nor cause of action. When the plaintiff is sought for the relief of permanent injunction mentioning the boundaries of the suit property is just and necessary and whatever facts stated in the proposed amendment are just and necessary for deciding the real controversy between the parties and facts stated in the proposed amendment will not cause any loss or injury to the defendant, if the plaintiff is not permitted to amend the plaint as per the proposed amendment it will cause irreparable loss and injury to the plaintiff and it will also lead to multiplicity of the litigation. By considering the contention of both the parties, I am of the considered view that if the plaintiff is permitted to amend the plaint as per the proposed amendment it will be helpful for the court for deciding the suit effectively and the defendant will have opportunity to file their additional written statement to the facts stated in the proposed

amendment and if any inconvenience is caused to the defendants which can be compensated by imposing suitable cost on the plaintiff. Under such circumstances, I am of the considered view that the plaintiff has made out the grounds to amend the plaint as per the proposed amendment. Hence, **I answered the Point No.1 in the Affirmative.**

10. POINT No.2: For the aforesaid findings, I proceed to pass the following:

ORDER

The application filed by the plaintiff U/o VI Rule 17 R/W Section 151 of CPC at IA.No.VIII is hereby allowed on cost of Rs.500/-.

The plaintiff is permitted to carryout necessary amendment to the plaint and furnish the amended plaint on or before next date of hearing.

Call on for furnishing amended plaint by
07.08.2026.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 05th day of August, 2026.)

(Umesh S. Atnure)
Prl. Senior Civil Judge Gokak.