

**IN THE COURT OF CIVIL JUDGE & J.M.F.C.,
AT SANDUR.**

Present : Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 8th day of October, 2025

O.S. No. 244/2022

Plaintiff/s : Mallikarjuna Rao B Nalavade,
S/o late Basavanth Rao Nalavade,
Aged about 51 years,
R/o H.No.49/1, ward No.1,
New KSRTC Bus stand,
Sandur town,
Sandur Taluk, Ballari District.

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

V/S

Defendant/s : Smt. N.B. Annapoorna,
W/o late Venkobanna Shetti,
R/o H. No.717, Ward No.XIV,
Sandur town,
Sandur Taluk, Ballari District.

(By Sri. T.M.S., Advocate)

I.A. NO. III

Applicant/s : Mallikarjuna Rao B Nalavade,
S/o late Basavanth Rao Nalavade,
(Plaintiff)

V/s

Opponent/s : Smt. N.B. Annapoorna,
W/o late Venkobanna Shetti,
(Defendant)

ORDER ON I.A. NO. III FILED UNDER ORDER VI RULE 17 R/w
SEC. 151 OF C.P.C. BY PLAINTIFF

The instant application is filed by the plaintiff under Order VI Rule 17 R/w Sec. 151 of C.P.C. seeking amendment of plaint by addition of para No.3(a) and 3(b). The application is filed on 05.12.2024 when the matter was settled for plaintiff's evidence.

2. It is contended that the plaintiff instituted this suit against the defendant for the relief of declaration and permanent injunction. At the time of filing the suit, due to oversight, necessary pleadings in respect of suit in O.S. No.39/2009 filed by the sister of plaintiff against him and others seeking partition and separate possession in respect of the properties including the

property in dispute in this case, were not averred. According to plaintiff / applicant, the said suit was decreed on 07.11.2018, and thereafter, his sister filed FDP No.13/2022 seeking final decree which is pending before the court. Recently, when he was discussing about the case, he informed about the suit property and the FDP proceedings to his counsel. After verification, the applicant found that the pleadings in respect of the above suit and FDP proceedings are very much necessary to bring to the notice of this court by way of amendment to the plaint. According to him, the said amendment is very much necessary for proper adjudication of the matter. If the application is allowed no prejudice will be cause to the other side. The proposed amendment will not change the nature of the suit and cause of action. If the application is not allowed much hardship will be caused to the applicant. On these grounds, he prays to allow the application.

3. The learned counsel for defendant filed objections to the application contending that the suit property was purchased

by the defendant from the father of plaintiff through Registered Sale Deed Dt. 24.06.1984. The plaintiff and his family members have no right, title or interest in the suit property. The plaintiff had instituted suit in O.S. No.39/2009 ignoring the prior sale deed in favour of defendant's husband executed by the father of plaintiff. The plaintiff failed to implead the defendant and legal heirs, despite of full knowledge of the sale deed, in the above suit. The defendant's family was in possession of the property since 1984. According to the defendant, the partition that taken place in O.S. No.39/2009 is incomplete and conclusive, and thus, not binding on the defendant. It is submitted that the plaintiff intend to introduce third party decree without impleading the parties. The plaintiff did not implead his sisters who had obtained decree in O.S. No.39/2009, who is necessary party. It is further submitted that the proposed amendment would change the cause of action and delay the proceedings. The proposed amendment will alter the nature of the suit. If the application is allowed serious prejudice will be caused to the defendant. Further the sale

deed was executed in the year 1984, and the partition suit was filed 25 years later. The present application is a afterthought aimed at misleading the court. Amongst other grounds, the defendant prays to dismiss the application.

4. The following points that arise for my consideration:

1. Whether the amendment sought is necessary for adjudication of matter in controversy ?
2. What order?

5. Heard learned counsel for plaintiff and defendant. In addition, the learned counsel for plaintiff filed written arguments. Perused the records.

6. My answer on the above points are as follows:-

Point No.1 : In the Affirmative

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

REASONS

7. **POINT NO.1**: This is a suit filed by the plaintiff for the

relief of declaration and permanent injunction in respect of suit property.

8. The defendant appeared but failed to file written statement. The trial has not yet commenced.

9. The plaintiff has taken several contentions in his plaint. According to him, his sister had instituted suit against him and other family members in O.S. No.39/2009 which came to be decreed and the Final Decree Proceedings are pending for consideration. It is submitted that the property covered by this suit was the subject matter of the *lis* in O.S. No.39/2009 and also in FDP No.13/2022. Therefore, any adjudication upon the rights in the suit property in the present suit has bearing on the parties to the suit. The decision in O.S. No.39/2009 assumes importance and has bearing to the present suit. The proposed amendment in the plaint in respect of the disposal of the *lis* in O.S. No.39/2009 is very much necessary to the purpose of determining the real question in controversy between the parties, since the court has

decided the rights and interest of the parties in the said suit. The plaintiff is seeking for the relief of declaration of his ownership. Much burden is casted on him to prove his ownership and possession over the suit property. The said amendment will not change the nature of the suit or the cause of action. The plaintiff is not bound to bring his sisters in the present suit by way of impleadment that too in a suit of present nature. As stated above, the trial in the suit has not yet commenced. Therefore, in order to avoid multiplicity of the proceedings, the application deserves to be allowed since it is very much required for adjudication of the matter in controversy between the parties. As such, this court answers Point No.1 in the **Affirmative**.

10. **POINT No.2:** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A.No.III filed U/O. VI Rule 17 R/w Sec.
151 of C.P.C. by the applicant is hereby
allowed.

The plaintiff shall carry out necessary amendment and file amended plaint.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 8th day of October 2025)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.