

KABI700006872014



**IN THE COURT OF THE CIVIL JUDGE AND JMFC,
SIRUGUPPA**

Dated this the 1st day of June 2024

Present:

Sri. HAJIHUSENSAB YADAWAD

B.Com, LL.B(Spl.),

Civil Judge & JMFC, Siruguppa.

O.S. No.68/2014

Plaintiff: K.Shivappa

V/s

Defendants: K.Lingappa & others

Parties to I.A.No.IV

Applicant : K.Shivappa
Petitioner

(By **Sri.N.A.S.** – Adv.)

V/s

Opponents: K.Lingappa & others
Respondents

(By **Sri.TVS/VPK/HKM.**– Advs.)

ORDERS ON I.A.No.XI FILED U/O VI RULE 17 R/w

Sec.151 of CPC

The counsel for plaintiff has filed IA No.XI U/O 6 Rule 17 R/w Sec.151 of CPC to amend the plaint by way of adding para 14(e) with respect to prayer to declare the sale-deeds dated

22.03.2022, 09.02.2010, 03.06.2014 and 28.10.2020 are null and void.

2. The said application is accompanied with an affidavit of plaintiff, wherein he contended that he came to know about the transfer of suit property between defendant No.1 to 3 on 24.01.2014 and 12.03.2014. Immediately, he obtained certified copies and filed the present suit. During the pendency of present suit, the defendant No.3 has sold the property to defendant No.4. Therefore, it is necessary to add para No.14(e) with respect to prayer of declaration to declare the above sale deeds as null and void. On these grounds he prayed to allow the application.

3. On the contrary, the counsel for defendant No.3 filed objections to the application contending that the application is not maintainable in the eyes of law. Further it is stated that the defendant No.3 has already filed IA U/O 7 Rule 11(d) R/w Sec 151 of CPC before this court for rejection of plaint, wherein he took contention that the suit of the plaintiff is not maintainable as the plaintiff did not sought the relief of cancellation of sale deed executed by defendant No.1 in favour of defendant No.2, defendant No.2 in favour of defendant No.3, defendant No.3 in

favour of defendant No.4 and defendant No.4 in favour of defendant No.5. Therefore, the present application is not maintainable. Without disposing the application filed by defendant No.3 U/O 7 Rule 11(d) of CPC., the present application is not maintainable. On these grounds he prayed to dismiss the application.

4. Heard both side on IA No.XI. Perused records.
5. The points for consideration of this Court are as follows;

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

2. What order?

6. My Findings to the above points are here under:

Point No.1 : In the **Affirmative**.

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

REASONS

7. **POINT No.1:-** This is a simple suit for partition, wherein the plaintiff sought for declaration of his legal half share over the suit properties. Now the present application is filed to add prayer with respect to declaration to declare that the sale deeds executed in between defendant No.1 to 5 are null and void. It is the contention of plaintiff that without the knowledge of

plaintiff, the defendant No.1 has sold the property to the defendant No.2 in turn the defendant No.2 sold the same in favour of defendant No.3, defendant No.3 sold in favour of defendant No.4 and defendant No.4 has sold the property in favour of defendant No.5. Now the present application is filed by the plaintiff to amend the prayer when the IA No.X was filed by the defendant No.3 U/O 7 Rule 11(d) of CPC., for rejection of plaint as the plaintiff has not sought the relief of declaration to declare the above sale-deeds as null and void.

8. It is pertinent to note that on the basis of pleadings, this court has framed issues on 02.09.2022, wherein Issue No.2 has already been framed with respect to burden to prove the sale transactions between defendant No.1 to 5 are not binding on the plaintiff. The said issue was framed as per the contentions taken by the plaintiff in his plaint para No.11(b). On perusal of plaint it is noted that the plaintiff has taken contentions with respect to sale-deeds executed between the defendant No.3 to 5 are null and void. But he has not sought declaration in prayer column to declare the alleged sale-deeds as null and void.

However, at this stage the plaintiff has come-up to rectify his

mistake made in the plaint. Till today the evidence of parties is not over and the suit is pending for the stage of Cross-examination of PW.1.

9. At this stage, if an opportunity is provided to the plaintiff to prove his case, it would meet the ends of justice. Therefore, to avoid the multiplicity of proceedings and to dissolve the controversy arose between the Plaintiff and Defendants, at this stage it would be proper to allow the application. If the said application is allowed then there will be no change in the nature of suit or cause of action. Hence, this Court is of opinion that the plaintiff has sufficient grounds to allow the application. At this stage it would be appropriate to go through the concerned provision i.e., Order VI Rule 17 of CPC.

10. Order VI Rule 17 of CPC empowers the Court to grant permission to any party to amend his pleadings, which are necessary for final and effective adjudication of real controversy between the parties. The proviso to rule 17 of Order VI of CPC provides that Court can allow any amendment to the pleadings after the commencement of the trial with due diligence.

11. Order VI Rule 17 of CPC permits all the amendments that are necessary. The proposed amendment of plaint is necessary for final and effective adjudication. The burden lies on the plaintiff to prove his case. Hence, at this stage allowing the application is necessary in the interest of justice and equity. The proposed amendment is necessary to determine the real question in controversy. Further, there would be no change in nature of suit or change of cause of action. Hence I answer **Point No.1** in the **Affirmative**.

12. Point No.2 :- Having discussed in detail, this Court pass the following;

ORDER

The I.A.No.XI filed by plaintiff U/O VI Rule 17

R/W Sec.151 of CPC is hereby allowed.

No order as to costs.

(Dictated to the Stenographer, after transcribed, computerized by him, corrected, signed and then pronounced by me in open Court, on this 1st day of June, 2024)

(HAJIHUSENSAB YADAWAD)
Civil Judge & JMFC.,
Siruguppa.