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**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., AT DEVANAHALLI.**

PRESENT

SRI. PRAVEEN NAYAK, LL.M.,
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 20th February, 2023.

O.S.No.42/2009

Sri. B.M. Munegowda : **Plaintiff**

(Plt. - By Sri. D.L.K.,
Advocate)

- V/s. -

Sri. A. Narayanaswamy : **Defendants**
Dead by his L.R,s

(Def.1(a) - By Sri. V.M.R.,
Advocate)

Def.1(b) - Dead.,

Def.1(c to f) - Exparte

(Def.2 to 5 - By Sri.
K.M.R., Advocate)

Def.1a(i) - By Sri.
V.M.R., Advocate)

Def.1(i & ii) - -----

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**ORDER IA.NO.IX**

I.A. No.9 has been filed by the counsel for the plaintiffs U/o.6 Rule 17 R/w.Sec.151 of C.P.C for amendment of plaint.

2. In the affidavit the accompanying the application the plaintiff has stated that on the date of filing of the suit katha and pahanies of item No.1 property measuring 2 acres 17 guntas was wrongly described in the Sale Deed executed by defendant No.1 and his father Appayanna. They have jointly sold the said land by mentioning the Servery number wrongly as 5/1 instead of 8/1. The said Sale Deed was executed in favour of the vendor of the plaintiff by name P. Thopanna. The Sale Deed dated 25.05.1977 was executed and possession was delivered in favour of the purchaser in respect of 1 acre 1 gunta of land in Sy.No.8/1. The said Thopanna along with his children was personally cultivating the land purchase by him. On the basis of the Sale Deed dated 25.05.1977 katha and mutations were transferred in the name of the purchaser T. Thopanna. Subsequently, on 26.05.1988, Thopanna and his son T. Narayanaswamy and defendants No.2 to 5 jointly sold the said land in favour of the plaintiff by wrongly showing the Sy.No. 8/1 instead of 5/1. The plaintiff was put in actual

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possession of the suit schedule property on the basis of the Sale Deed dated 26.05.1988. One Krishnappa and others have jointly filed RA.No.119/2004-05 before the Tahsildar, Devanahalli. The respondent No.2 in that proceedings was Narayanaswamy and he has engaged the service of an advocate in respect of Sy.No.23/1 measuring to an extent of 1 acre 26 guntas of Budenpadiya Village, Vijayapura Hobli. The order dated 11.12.2003 passed in respect of Sy.No.23/1 was challenged and the notices of appeal were duly served upon the respondents. A Narayanswamy appeared before Assistant commissioner and filed compromise petition dated 20.01.2006. In the said appeal it was admitted that A. Munishamappa has purchased 1 acre 1.08 guntas of land through absolute registered Sale Deed dated 18.05.1966. However, in the said Sale Deed the survey number was wrongly described as 23/1 instead of 5/1. In the compromise petition dated 20.01.2006 both Survey numbers have been wrongly mentioned. It is admitted in the compromise petition that Narayanaswamy and his father have jointly sold a total extent of 2 acres of 3 guntas in Sy.No.5/1 in favour of Appayanna and Babu Rao. The purchasers have been in possession and enjoyment of the said properties. Appayanna has no objection to mutate katha in respect of Sy.No.5/1 in his name. Suitable orders have been

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passed as per compromise petition. Late Appayanna never sold any portion in Sy.No.5/1 in favour of Thopanna through registered Sale Deed dated 25.05.1977. Accordingly, Thopanna has not sold any portion in Sy.No.5/1 in favour of the plaintiff through registered Sale Deed dated 26.05.1988. The defendant No.1 is legally estopped to contend that he has sold only land in Sy.No.5/1 and not in Sy.No.8/1 of Budenpadiya Village. In order to plead the factual aspects, the amendment is necessary. Hence prayed to allow the application.

3. The defendants No.6 to 9 filed objection to the application by stating that, the application is not maintainable under law. The plaintiff has filed the suit for the relief of declaration and mandatory injunction for rectification of deed by mentioning Sy.No.8/1 instead of 5/1 of Budenpadiya Village. The plaintiff has sought for declaration on the basis of the said mistake. The entire contention of the plaint has no legal sanctity as boundaries of Sy.No.8/1 and 5/1 are entirely different. When the main relief itself is not sustainable, the question of granting interim relief does not arise. The proposed amendment leads to hurdle for disposal of suit. The amendment is noway concerned to the relief sought in the plaint the proposed amendment does not come within the

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pervue of order 6 Rule 17 of C.P.C. The plaintiff could have pleaded those facts at the time of filing of the suit. The plaintiff has not shown due-diligence. Hence prayed to reject the application with cost.

4. Heard both sides.

5. The following points would arise for my consideration:

1. Whether the plaintiff has made out grounds to allow the application ?
2. What order?

6. My answer to the above points are as follows:

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

Point No.2 : **As per final Order
for the following :**

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REASONS

7. **Point No.1:** The plaintiff has sought for amendment of plaint to insert certain facts in the plaint by way of amendment. It is stated in the affidavit that the plaintiff has been pleading proposed amendment on the basis of subsequent events. In order to plead the factual aspects, the amendment is necessary. Hence prayed to allow the application.

8. On the other hand the defendants No.6 to 9 have objected the application on the ground that the application is not maintainable under law. It is stated that the proposed amendment leads to hurdle for disposal of suit. The amendment is noway concerned to the relief sought in the plaint the proposed amendment does not come within the perview of order 6 Rule 17 of C.P.C. The plaintiff could have pleaded those facts at the time of filing of the suit.

9. In view of the rival contentions, on going through the provision of law it is clear that an amendment of pleadings after commencement of trial has to be allowed only if court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. In this

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case the trial is not yet begin. It is settled position of law that an application for amendment can be filed at any stage of the suit. It is also settled position of law that amendment should be liberally allowed when it does not change the nature of the suit or the cause of action. On going through the proposed amendment. It is clear that the plaintiff intends to narrate certain facts regarding the suit schedule properties which occurred subsequently. The proposed amendment is very much necessary to determine the question in controversy. The amendment is not going to change the nature of the suit and it will not take away the original cause of action to file the suit.

10. Though the defendants have contended that the application is not maintainable there is no such reason made out in the objection to reject the application. It is also settled position of law that any number of applications for amendment of plaint can be filed by either party. The plaintiff has specifically stated in the affidavit that he is pleading certain important facts in the plaint by way of amendment. The proposed amendment is not going to cause injustice to the other side. Moreover, the defendants No.6 to 9 have the opportunity to file additional written statement to the amended plaint and to deny the facts pleaded by way of amendment. Hence, the plaintiff has made

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out to grounds for amendment of plaint. Accordingly, I answer
Point No.1 in the Affirmative.

11. **Point No.2** : In view of the above findings on Point No.1 this court proceeds to pass the following:

ORDER

IA No.IX filed under U/o 6
Rule 17 R/w.Sec.151 of C.P.C is
hereby allowed.

The plaintiff is permitted to
carryout amendment as prayed
for.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 20th Day of February, 2024).

(SRI.PRAVEEN NAYAK)
Addl. Senior Civil Judge & JMFC.,
Devanahalli.