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

PRESENT

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

Dated this day of 01st February, 2024.

F.D.P. No.21/2006

Smt. Jayamma & Others : **Petitioners**

(Plt. - By Sri. G.M.
Advocate)

- V/s. -

Sri. Byre Gowda & Others : **Respondents**

(Res.1, 3 to 6, 8 to 10 -
Ex-parte)
(Res.7 - By Sri. D.V.K.
Advocate)
(L.R.s of Res.2 - By Sri.G.S.
Advocate)

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(L.R.s of Res.2(b)(1 & 2) - By
Sri.G.S. Advocate)

(L.R.s of Res.2(b)(4) - By
Sri.G.S. Advocate)

(L.R.s of Res.2(b)(3) ---)

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COMMON ORDER I.A.No.III & IV

I.A. No.III has been filed by the petitioners U/o.VI Rule 17 R/W.Sec.151 of C.P.C for amendment of final decree proceedings.

2. I.A. No.IV has been filed by the petitioners U/o. I Rule 10 R/W.Sec.151 of C.P.C to implead respondents No.8 to 10 to the final decree proceedings.

3. In the affidavits accompanying I.A. No.III and IV, the petitioners have stated that, they have filed the suit for partition and separate possession in O.S.No. 130/1993 on the file of II Additional Civil Judge, Bengaluru Rural District and the same was disposed off by passing preliminary decree dated 28-11-1994. The petitioners have preferred this final decree proceedings in terms of the preliminary decree. The 2nd respondent filed objections in this petition. The Advocate for

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the petitioners has instructed to secure certified extract of R.T.C. and mutation register and thereafter, the petitioners came to know that, the 3rd respondent and his children have sold property measuring 30 guntas in Sy.No. 76/2 in item No.3 and 4 of suit schedule property and 15 guntas in item No.5 of the suit schedule properties in favour of the proposed respondents vide Sale Deed dated 23-02-1993. Similarly, 4th respondent sold property measuring 25½ guntas in Sy.No. 76/2 and 20 guntas in Sy.No. 76/6 of Kannamangala Village in favour of one of the proposed respondents vide Sale Deed dated 06-08-1993. The said transactions are not binding upon the petitioners and those properties were not sold for the benefit of the family. The respondent No.2 to 4 and others have sold 15½ guntas in Sy.No. 76/2 and 5 guntas in Sy.No. 76/6 vide registered Sale Deed dated 04-01-1996 in favour of respondent No.1. Therefore, the petitioners restricted their claim in respect of item No.4 only. Smt. Muniyamma and the respondents No.3 and 4 have sold an extent of 15 guntas in Sy.No. 63/3 vide registered Sale Deed dated 11-09-1981. K. Narayanappa sold the said property vide registered Sale Deed dated 20-07-2005 in favour of one Venkateshwara Rao. The Sale Deeds were not executed for legal necessity of the family. The purchasers are necessary parties to decide the issues

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effectively and those facts are required to be pleaded in the petition. Hence, prayed to allow the applications.

4. The proposed respondents failed appear before his Court in response to notice. The respondent No.2 filed objections to I.A. No.III by stating that, the application is not maintainable under law. It is stated that, amendment to final decree petition is unknown to law and the same is not provided under C.P.C. The Judgment was passed on 28-11-1994 and final decree proceedings itself is barred under law. The transaction dated 23-02-1993 cannot be pleaded in the present petition. Hence prayed to dismiss the application with cost.

5. Heard both sides.

6. **The following points would arise for my consideration:**

1. Whether the petitioners made out grounds to allow I.A. Nos.III and IV?
2. What order?

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7. **My answer to the above points are as follows:**

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

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

REASONS

8. **Point No.1:** This is a final decree proceedings initiated by the petitioners in continuation of preliminary decree dated 28-11-1994 passed in O.S.No. 130/1993. The present applications came to be filed for amendment of plaint and to implead respondents No.8 to 10 to the final decree proceedings. The proposed amendment is sought based on the alleged Sale Deeds dated 23-02-1993 and 11-09-1981 and subsequent Sale Deeds. In the affidavit it is clearly stated that, the Advocate on record has instructed to secure the certified copies of revenue documents and they came to know about the said transactions. It is further stated in the affidavits that, those transactions are not binding upon the petitioners as the Sale Deeds were not executed for the legal necessity of the family. On the basis of the same the petitioners prayed for permission to amend the petition and to implead the proposed

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respondents No.8 to 10 as parties to the final decree proceedings.

9. The learned counsel for the respondent No.2 has resisted the application and contended that, the same is not maintainable under law. He has relied upon a decision of Hon'ble High Court of Karnataka reported in ILR 2007 KAR 4308, K. Sundar Rao and Others V/s. K. Ramakrishna Rao, wherein it is held that, "the Court cannot go behind the preliminary decree in final decree proceedings. The contention of the petitioners that, certain properties are set apart for veniyogas of the family and village deities was not raised in the Written Statement and the said contention is not a development subsequent to the date of preliminary decree - the petitioners are estopped from taking such contention at this stage as the same was not raised in the suit and it is beyond the scope of enquiry in final decree proceedings". I have gone through the above decision. The decision is clearly applicable to the case on hand. In these applications the petitioners intend to amend the petition by inserting certain facts about transactions, which are prior to passing of preliminary decree. The Court cannot determine those aspects in this petition and the proposed amendment is clearly beyond the scope of the final decree proceedings. It is to be noted

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that, the proposed respondents No.8 to 10 are the alleged purchasers of the properties mentioned in the accompanying affidavits. When the proposed amendment itself cannot be allowed, the question of impleading those persons as parties to the final decree proceedings does not arise.

10. The learned counsel for the petitioners has relied upon following decisions :

a. 2004 AIR SCW 4522

b. AIR 2006 SC 1647

11. I have gone through the above decisions. In the above decisions it is held that, amendment of pleadings can be allowed even at belated stage. However, the decisions are not applicable to present set of facts as the applications themselves are based on transactions prior to preliminary decree. Accordingly, I am of the considered opinion that, the petitioners have not made out grounds to allow I.A. No.III and IV. Hence, **I answer Point No.1 in the Negative.**

12. **Point No.2** : In view of the above findings, I proceed to pass the following.

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**ORDER**

I.A. No.III filed by the petitioner U/O. VI Rule 17 R/W.Sec.151 of C.P.C is hereby rejected.

I.A. No.IV filed by the petitioners U/o.I Rule 10 R/W.Sec.151 of C.P.C is hereby rejected.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 01st Day of February, 2024).

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