

KABR610000622006



IN THE COURT OF THE I ADDL CIVIL JUDGE AND
JMFC., NELAMANGALA

Dated this the 9th day of July, 2025

PRESENT: SRI.MANJU.M, B.sc., L.L.B.,
I Addl. Civil Judge & JMFC.,
Nelamangala.

OS.No.168/2006

Plaintiff: Smt Bhagyamma.T,
W/o late Byrahanumaiah,
Aged about 40 years,
R/at 9th Cross, Subhashnagara,
Vajarahalli Road,
Nelamangala- 562 123.

[By Sri N.K.S., Advocate]

-V/s-

Defendants:1. Anjinappa, Since dead
plaintiff and defendants are L.R's
of defendant No.1

2. Bylappa, since dead by L.R's

2a. Kemparathnamma D/o Bylappa,
R/at No.688, Amma Nilaya,
5th Main, 11th Cross, M.C.Layout,
Vijayanagara, Bengaluru-40.

- 2b. Shashikala.B D/o bylappa,
R/at No.48, Sri Kalikamba,
3rd floor, 6th Main, 1st stage,
4th Cross, K.N.Extention,
Yashwanthapura, Bengaluru-22.
3. Siddagangappa S/o Anjinappa,
Aged about 60 years,
R/at Byranahalli, Kasaba Hobli,
Nelamangala Taluk,
4. Smt Kempabyramma,
W/o late Venkateshappa,
Aged about 65 years,
R/at Lakshmipua village,
Dasanapura Hobli,
Bengaluru North Taluk.
5. Smt gowramma W/o
Siddagangamma,
Aged about 60 years,
R/at No.1997, 6th Cross,
S.T.Martha school,
Bhuvaneshwari Nagar, T.Dasarahalli,
Bengaluru.
6. Kempaiah s/o anjinappa,
R/at Byranahalli village,
Nelamangala Taluk,
Bengaluru Rural District.
7. B.Hanumantharaju S/o A Bylappa,
Aged about 46 years,
R/at No.T-2, Mahima Residency,
M.S.Palya Post, Vidyaranyapura,
Bengaluru-560097.

8. B.Shivakumar S/o A.Bylappa,
Aged about 47 years,
9. B.Padmanabhaiah S/o A.Bylappa,
Aged about 34 years,

D8 and D9 are R/at Sri Maruthi
Nilaya, Near NH-4 road,
T.Begur Post, Nelamangala Taluk,
Bengaluru Rural District.

10. Smt Manjula.B,
S/o lae Byrahanumaiah,
Aged about 28 years,
R/at Krishnamurthy Building near,
Annapoorneshwari Nilaya,
1st Cross, Channappa Badavane,
Nelamangala Town, Nelamangala
Taluk, Bengaluru Rural District.

[By Sri R.K., Advocate]

Parties on I.A.No.38

Applicant/plaintiff: Smt Bhagyamma

V/s

Opponent/Defendants: Anjinappa and others.

ORDER ON IA. NO.38

This is an application filed by the plaintiff under
Order 6 Rule 17 read with Section 151 of CPC prays

to delete item No.16 of suit schedule property that is Sy.No.31/2, measuring 1 acre 6 guntas situated at Marohalli village, Kasaba Hobli, Nelamangala Taluk.

2. This application is supported by an affidavit of plaintiff. In the said affidavit the Applicant has sworn to the fact that, she has filed a suit against defendants for the relief of partition and separate possession. Further, it is submitted that the plaintiff has filed the application for impleading necessary parties to this suit and the plaintiff came to know that they no way related to the Item No.16 of the suit schedule property and the plaintiff has filed memo for dismissal of the said impleading application and this court has allowed the memo. Further, it is submitted that item No.16 of the suit property not belongs to the joint family property of plaintiff and the plaintiff has no right to claim the share in item No.16 of the suit schedule property. Further, it is submitted that if the application is

allowed no hardship or injury will be caused to the defendants. Hence, prays to allow the application.

3. The defendant No.4 has opposed this application by filing objection. In the objection, the defendant No.4 has denied the allegation of fact made by the plaintiff and contended that the plaintiff has admitted that item No.16 of the suit property is the joint family property of plaintiff and defendants and the said admitted facts cannot be withdrawn. Further, it is submitted that the defendant No.4 filed a written statement on 10.01.2022 by seeking counter claim and also paid court fee and the plaintiff never object the counter claim of the defendants by filing rejoinder to the counter claim. When thus being the fact, the defendant No.4 is also having a share in the item No.16 of suit schedule property. Further, it is contended that the plaintiff without any proof contending that item No.16 is not the joint family property and the said acts of the

plaintiff may clearly goes to show that the plaintiff colluding with the applicant withdrawn the impleading application and the present application is filed. Further, it is contended that the plaintiff has mis represented the facts before the court and the plaintiff has not approached the court with clean hand. Further, it is contended that item No.16 of the suit property is also joint family property of plaintiff and defendants and the defendant No.4 is also entitled for share in the said property and without allotting any share in item No.16 to the defendant No.4, it cannot be deleted and the said property is necessary for proper adjudication of the suit. Hence, prays to dismiss the application.

4. Heard the arguments of both sides.

5. In view of the rival contentions raised by the parties, the points that arise for my consideration are as follows:

1) Whether this application deserves to be allowed or not?

2) What Order?

6. Now, my answers to the above points are as follows:

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

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

REASONS

7. **POINT NO:1:** It must be noted that, I need not repeat the entire contention of the parties herealso, since, I have already narrated the same at the inception of this order.

8. Keeping in view, the rival contentions raised by the parties again I have perused the present application under Order 6 Rule 17 of CPC filed by the Plaintiff. It is relevant to note that through this I.A.No.38, the plaintiff is seeking permission to delete Item No.16 of the suit property by way of amendment.

9. On the other hand, the defendant No.4 disputes this application on the ground that the amendment application does not make out proper grounds for allowing the application and the defendant No.4 has sought for counter claim over suit schedule property including item No.16 of the property.

10. In my humble opinion, at this point of time, proviso appended to Order 6 Rule 17 places an embargo on the power of court to grant permission for amendment after commencement of trial unless sufficient cause is shown. Further, it is to be noted that in the plaint, the plaintiff has categorically stated that item No.16 of the suit property is the joint family property. In the case on hand, the defendant No.4 has filed the counter claim and sought for share over the suit property. Further, the plaintiff has filed this application at belated stage and baldly taken a contention that item No.16 of the suit property is not a joint family property. In view

of the proviso appended to Order 6 Rule 17 of CPC and also by considering the facts and circumstances of the case, the application filed by the plaintiff is not maintainable and devoid of merits. Hence, this court is proceed to answer **Point No.1 in the Negative.**

11. Point No:2:In view of my findings to point No.1, I proceed to pass the following:

ORDER

I.A.No.38 filed by the applicant under Order 6 Rule 17 of CPC is dismissed with cost of Rs.500/-.

To hear on I.A.No.39.

Call on : 01.08.2025

(Dictated to the Stenographer directly on computer, typed by him, corrected and signed by me and then pronounced in the open Court, on this **9th day of July, 2025**)

Sd/-

I Addl. Civil Judge and JMFC.,
Nelamangala.