

KABR610035482014



**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC AT
Nelamangala**

PRESENT: **Dr. Smt. Chandini. N.** BA.L.,LL.M.,Ph.D.,
Addl. Civil Judge & JMFC,
Nelamangala.

Dated this 11th day of February 2025

O.S.No.504/2014

- Plaintiff:**
- 1.** Govindaiah S/o late Basappa,
Since dead L.Rs'
 - 1a. Smt Venkatamma W/o late Govindhaiah,
Aged about 70 years,
R/at Yeranapalya village,
Thyamagondlu Hobli, Nelamangala Taluk,
Bengaluru Rural District.
 - 1b. Smt Venkatamma W/o Guruvaiah,
D/o late Govindhaiah,
Aged about 48 years,
 - 1c. Smt Venkatalakshmma W/o lakshmana,
D/o late Govindhaiah, Aged about 47 years,

1b, 1c are R/at Channalingaianapalya village,
Thyamagondlu Hobli,
Nelamangala Taluk, Bengaluru Rural District.

- 1d. Girish S/o late Govindhaiah,
Aged about 40 years,
R/at E-Hosuru village, Kundhana Hobli,
Devanahalli Taluk,
Bengaluru Rural District.
- 1e. Manjunath S/o late Govindhaiah,
Aged about 37 years,
- 1f. Smt Nagamma W/o late Gangadhar,
Aged about 32 years,
1e and 1f are R/at Yeranapalya village,
Thyamagondlu Hobli, Nelamangala Taluk,
Bengaluru Rural District.

(By Sri NHP., Advocate)

V/s

Defendant: Naveen Kumar S/o late T.P.Khadripathi,
Aged about 34 years,
R/at Tavarekere village,
Thyamagondlu Hobli, Nelamangala Taluk,
Bengaluru Rural District.

(By Sri CBP., Advocate)

PARTIES IN IA.NO.9 and 10

Applicant/plaintiff: Govindhaiah, Since dead L.R's
Smt Venkatamma and others.

V/s

Opponent/Defendant: Naveen Kumar.

ORDER ON IA.NO.9 and 10

The plaintiff has filed this application under Order 18 Rule 17 R/w. Sec. 151 of Civil Procedure Code praying this court to permit recall the order dated 15.11.2022 and permit the plaintiff legal representatives to lead their evidence, in the interest of justice and equity.

2. The L.R's of plaintiff i.e., 1(e)., Manjunatha in his affidavit annexed to this application has stated that the plaintiff has filed suit against defendant for declaration, to Declare that the agreement of sale dated 30.01.2013 and registered Document No.NMG-1-11505-2012-13 and stored in CD No.NGD-273 in the office of Sub-Registrar, Nelamangala is null and void and not binding on the plaintiff and his family members as the defendant has breached the terms of said sale agreement and to declare that the plaintiff and his family members are the absolute owners

of the schedule B property for the perfection of their title over the schedule B property and for permanent injunction against the defendant.

3. It is further submitted that, plaintiff passed away on 20.03.2022 after the death of his father, the applicant and other legal representatives appeared before this court by filing L.R's application on 28.06.2022, the said application was allowed by this court. On 09.09.2022 they are filed the amended plaint. After the case is posted to plaintiff's further evidence. On 15.11.2022 in the absence of his counsel his junior counsel prays time for further evidence of plaintiff by filing fresh evidence affidavit, but this court passed an order by taking plaintiff's further evidence as nil and posted for cross examination of Pw.1 and posted the case for cross examination of Pw.1 but the pw-1 died on 20.03.2022. As such as the legal representatives of plaintiffs are having good case in their hand, the evidence of plaintiffs is very much important and necessary to property adjudication of the above suit.

4. It is submitted that, if the application is not allowed, plaintiff's will sustain irreparable loss, damage and injury. On the contrary, no hardship or inconvenience will be caused to the other side, if the above application is allowed. The L.R's of

plaintiff are seeking permission to recall and reopen the stage in this plaint. Hence, all these grounds prayed to allow the application.

5. The defendants have filed objections stating that the applications filed by the L.R's of plaintiff is false, frivolous and vexatious and the same is not maintainable either in law or on facts and the same is liable to be dismissed in limine.

6. Based on the rival contentions of the parties the points arise for my consideration are as follows:

1. Whether the plaintiffs have made out grounds to allow the applications as prayed for?
2. What order?

7. Heard both sides and perused the materials placed on record and written arguments filed by the defendant .My findings to the above points are as follows:

Point No.1: In the Affirmative

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

REASONS

8. **Point No.1:** On perusal of records it appears that the plaintiff has filed this suit for Declaration. Further, as per the order sheet dated 15.11.2022, the plaintiff counsel has sought

for time for further chief examination of the Pw-1. The same was rejected. It is the duty of the plaintiffs to file necessary application for discarding the evidence of the Pw-1 and also to furnish the witness list for his further evidence along with proper application. The plaintiffs have failed to do so. The facts which are alleged in the application about the submission of the junior advocate are unknown to this court and the same are also not mentioned in the order sheet. Hence, the same cannot be taken into consideration. On the other hand, the defendants have raised formal objections.

9. It is relevant to observe that the plaintiffs have filed these applications at the stage of cross examination of the Dw-1. Admittedly, these applications are filed at a belated stage. However, Every opportunity must be given to the plaintiffs to prove their case. Further the burden of proving their case is on the plaintiffs. Therefore, in the interest of justice, this court is of the opinion that these applications deserves to be allowed. However for the delay the plaintiffs must be saddled with cost. Hence, this court is of the opinion that the plaintiffs have made out grounds to allow the I.A.No.9 and I.A.No.10. Accordingly, I answer the Point No.1 in the Affirmative.

10. Point No.2: In view of the findings on the point No.1 this court proceedings follow:

ORDER

IA.No.9 and 10 filed by the plaintiff
Under Order 18 Rule 17 and U/Sec. 151 of
Civil Procedure Code is hereby allowed
with cost of Rs.200/-.

Stage is recalled. Pray time. For further
evidence of plaintiffs by 05.03.2025.

(Dictated to Stenographer directly over computer typed by him, corrected, signed
and then pronounced by me in the open court this the 11th day of February, 2025)

Sd/-
c/c III Addl. Civil Judge & JMFC.,
Nelamangala.