



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
MUDIGERE

PRESENT : Sri.Sachin.D. B.A.,LL.B.,
Prl.Civil Judge & JMFC.,
Mudigere.

DATED THIS THE 07th DAY OF JULY 2023

ORIGINAL SUIT.No:49/2021

BETWEEN :

1. Dhruv Choudhry,
S/o Samir Choudhry,
Aged about 31 years.

2. Angad Chodhry,
S/o Samir Choudhry,
Aged about 30 years.

Both are R/o No.48,
Chitrakoot Apartments,
18th Cross, Malleswaram,
Bengaluru-560 055.

... Plaintiff

(By Sri. Prasanna.R, Adv.,)

AND :

1. D.H.Vasanthappa,
S/o D.M.Hosanthappa,
Aged about 66 years,
R/o Devavrunda Village,
Gonibeedu Hobli,
Mudigere Taluk,
Chikkamagaluru District.



2. Janhavi R Bhatt,
W/o late Ram Bhatt,
Aged about 56 years.
3. Raghavendra Bhatt,
S/o late Ram Bhatt,
Aged about 33 years.
4. Rajendra Bhatt,
S/o late Ram Bhatt,
Aged about 24 years.

Defendants No.2 to 4 are
R/o Alantila Mane,
Kuvettu Post, Padangadi,
South Canara District-574 217.

5. Reshma.D.R,
C/o Krishnamurthy.M.S,
Aged about 34 years,
R/o Mulya Village, Sulya,
South Canara District-574 217. *...Defendants*

**(D-1 By Sri.N.S.Jayaram, Adv.,)
(D-2 to 5 Ex-parte)**

PARTIES TO IA. No.7

BETWEEN :

Dhruv Choudhry & Anr. *...Applicants*

AND :

D.H.Vasanthappa & Ors. *...Opponents*

**ORDERS ON IA NO:7**

The present application is filed by the plaintiffs under section 151 of CPC, when the case was posted for plaintiff evidence, seeking an order of this court to recall the stage from the plaintiff evidence to file an application under Order 6 Rule 17 of CPC for amendment of the plaint.

2. In the memorandum of facts annexed to the application, it is stated that the plaintiffs have filed the present suit as there was a purported claim of public road made by the defendants and eventual trespass inside the suit schedule property. There was delay in effecting the mutation and RTC entries based on title with respect to suit schedule properties. Whereas, the plaintiffs due to COVID-19 restrictions were unable to submit those documents at the time of filing of the suit. The registered GPA in favour of the plaintiffs was with respect to 31 acres 2 guntas of suit schedule properties was released in the year 2022, even though it was presented for registration on 06.01.2021. Therefore, the plaintiffs needs to get aforesaid documents on record for amending the plaint. Therefore, the stage for filing the application under Order 6 Rule 17 of CPC for amendment has to be recalled. It is further stated that if the application is allowed, no loss or injury will be caused to the other side. On the other hand, if the application is rejected,



the plaintiffs will be put to irreparable loss and injury. Hence, prayed for allow the application.

3. The above application has been resisted by the defendant No.1 by filing objection statement. Wherein, it is contended that the present application is filed by the plaintiffs with an intention to protract the proceedings and to defer the justice to the defendant No.1. Plaintiffs have not made out any grounds in the application and also grounds made are plausible. It is further contended that the IA.No.1 filed by the plaintiff was allowed on 08.10.2021 and suit was posted for plaintiff evidence. Since then, the plaintiffs without adducing evidence bringing application and there is no due diligence in filing the application. It is further contended that if the application is allowed, the defendant No.1 will be put to irreparable loss and injury. On the other hand, no hardship or injury will be caused to the plaintiff. Hence, prayed for dismiss the application with costs.

4. In view of the above rival contentions of the both parties, the following points arise for consideration.

1. Whether the plaintiffs have made out sufficient grounds to allow the present application at this stage?

2. What order?



5. Having heard both side, the court perused the application, memorandum of facts, objection statement and other materials made available on record. Now, the findings of the court to the above points are as follows.

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

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

REASONS

6. **POINT NO.1:** The present suit filed by the plaintiffs for the relief of permanent injunction with respect to suit schedule properties and when the case was set-down for plaintiff evidence, the present application is moved by the plaintiffs seeking an order of this court to recall the stage to file an application under Order 6 Rule 17 of CPC for amendment of plaint. It is the contention of the plaintiffs that they could not have file at the time of filing the suit the documents of mutation register and RTC extracts with respect to effecting khatha of the suit schedule property and GPA which has been received in the year 2022 and therefore, he needs to file an application for amendment.

7. On perusal of the order sheet, it is reveals that along with the present application, the plaintiffs have also filed the IA.No.8 under Order 6 Rule 17 R/w section 151 of CPC, seeking for amendment of the plaint. If the present



application is allowed, no loss or injury will be caused to the defendant No.1 as he could raise the objection to the amendment application also. If the application is rejected, plaintiff will be prevented to seek amendment. Hence, the plaintiffs have made out sufficient grounds to allow the present application. Accordingly, this court answer point No.1 is **in the Affirmative.**

8. Point No:2: In view of the above discussions on point No:1 this court proceed to pass following:

: O R D E R :

The IA No.7 filed by the plaintiffs under section 151 of CPC is hereby allowed.

No order as to costs.

*(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **07th day of July, 2023**)*

(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

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