



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

DATED: THIS THE 06th DAY OF FEBRUARY 2023

Present: Sri. Sachin.D, B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

ORIGINAL SUIT No: 57/2019

BETWEEN :

1. Kum.D.J.Eshwari,
D/o Sri.D.R.Jayaram,
Aged about 19 years.

2. Master D.J.Edanth,
S/o Sri.D.R.Jayaram,
Aged about 9 years.

R/o Devavrunda Village & Post,
Mudigere Taluk,
Chikkamagaluru District.

Plaintiff No.2 is minor

Represented by plaintiff No.1

... Plaintiffs

(By Sri. M.S.Gopala Gowda, Adv.,)

AND :

1. Sri.D.R.Jayaram,
S/o late Rangegowda,
Aged about 48 years,
R/o Devavrunda Village & Post,



OS.No.57/2019

Mudigere Taluk,
Chikkamagaluru District.

2. Smt.Sahithya.B.N,
W/o D.R.Jayaram,
Aged about 40 years.
3. Sri.Arun Hassan Jayaram,
S/o H.R.Jayaram,
Aged about 38 years,
R/o # 56, II Cross, II Stage,
Arekere, MICO Layout,
Bengaluru-76.

...Defendants

(D1-By Sri.S.Siddaiah, Adv.,)
(D2-By Sri.B.A.Suresh, Adv.,)
(D3-By Sri.D.K.Prasanna Kumar, Adv.,)

PARTIES ON I.A.NO.5

BETWEEN :

Kum.D.J.Eshwari & Anr. *... Applicants*

AND :

Sri.D.R.Jayaram & Ors. *...Opponents*

ORDERS ON I.A.NO.5

The plaintiffs have filed the present application under Order 6 Rule 17 of CPC, at the stage when the case was set-down for hearing on interim application, seeking an order of



this court to amend the plaint as made mentioned in the application.

2. In the affidavit annexed to the application plaintiff No.1 deposed that they have filed suit for the relief of partition and other reliefs with respect to suit schedule properties. Further her father i.e., defendant No.1 has acquired the ownership of the properties in the joint family which are ancestral properties to the plaintiffs. It is further deposed that defendant No.1 has sold the said properties without their consent and purchased the suit schedule properties out of the sale proceeds of the ancestral properties. Again, defendant No.1 has sold and conveyed the properties in favour of defendant No.3 and the proposed defendant. Therefore, the sale deed executed in favour of defendant No.3 and proposed defendant are not binding to their share.

3. It is further deposed that defendant No.3 in his written statement has contended that some properties have been sold to Sri.K.M.Prakash and in order to implead him as a defendant, the IA.No.3 also filed. Therefore, it is just and necessary to the plaintiffs to implead the proposed defendant as well as to include the properties in the suit and



to amend the prayer column. It is further deposed that if the application allowed, no loss or injury caused to the defendants and on the other hand, if the application is rejected, the plaintiffs will be deprived from their legal right and also it leads multiplicity of the proceedings. Therefore, it is prayed for allow the application and permit them to amend the plaint as made mentioned in the application.

4. In spite of opportunities, defendant No.1 to 3 have not filed their objection statement to the aforesaid application. However, the above application has been resisted by the proposed defendant by filing objection statement. Wherein it is contended that the application of the plaintiffs is not maintainable as it is vexatious, capricious and filed to harass the proposed defendant. It is further contended that defendant No.3 in his written statement has taken some vague and ambiguous contention and the same has to be proved after holding full fledged trial. Without doing so, present application filed to harass mentally to the proposed defendant. It is further contended that upon vague statements, the plaintiffs have stepped into the shoes of defendant No.3. It is further contended that in fact that exist any claim, which are claimed against the defendants by the plaintiff will suffice there case and without waiting for the



out come, the resorted to file the present application implead the proposed defendant. It is further contended that no relief claimed against the proposed defendant in the plaint and as such, the application is not maintainable and acceptable.

5. It is further contended that there are lots of lacuna in filing the suit and it is filed by collusion with defendant No.2 as she is the mother of the plaintiffs and to take revenge against the defendant No.1 as the relationship between husband, wife and children was soared. It is further contended that defendant No.1 has also initiated the proceedings of divorce against defendant No.2 and therefore, individual, personal and conjugal dispute are the main reason for file the present suit and also for the application. It is further contended that the proposed defendant is the bonafide purchaser and both the plaintiffs have represented through their natural guardian and next friend who are defendant No.1 and 2 to sale deed under which the properties have been sold. The plaintiffs have already benefited and the suit schedule properties are purchased out of the proceedings of the sale took place between the proposed defendant, plaintiffs and defendant No.1 and 2. Further it is contended that suit of the plaintiff is collusive in nature and therefore, the proposed defendant who is



bonafide can't be swindled by these pressure of tactics. Further, the application filed by the plaintiffs beyond the period of limitation and therefore, application is not the proposed defendant can't be made as a party in the proceedings. Hence, prayed for dismiss the application of the plaintiffs with exemplary costs.

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

- 1. Whether the proposed amendment which sought by the plaintiff is just and proper to determine the real questions in controversy between the parties?***
- 2. Whether the plaintiff has made out due diligence that inspite of all efforts she could not raise the proposed amendment before commencement of trial?***
- 3. What order?***

7. Having heard both side, the court perused the application, affidavit, 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 : ***In the Negative***



Point No.3 : *As per final order
for the following:*

REASONS

8. POINT No.1 AND 2: As these two points are inter-linked each other and requires common discussion, hence they have taken together for consideration. Plaintiffs have filed the present suit for the relief of partition and separate possession of their share in the suit schedule properties and also for declaration to declare that the sale deed dated 11.02.2015 is not binding to them. When the case is posted for hearing on interim application No.3, the present application is filed to amend the plaint as made mentioned in the application. On reading of the proposed amendment contents it is clear to the court that the plaintiffs wants to add that the sale deed dated 18.06.2012, which executed by defendant No.1 in favour of defendant No.2 is also not binding upon them and also they want to add the properties in plaint schedule which are purchased subjected to sale deed dated 18.06.2012.

9. Order 6 Rule 17 of CPC confers the jurisdiction to the court to allow either party to the suit to alter or



amend their respective pleadings at any stage of the proceedings and on such terms as may be just. Such amendments should be for determination of real questions in controversy between the parties. Pre-trial amendments are to be considered more liberally, than those which are sought after the commencement of trial. Therefore, whether the proposed amendment is just and proper for determining the real questions in controversy between the parties is the cardinal test and it is the primary duty of the court to decide that whether the amendment sought is necessary to decide the real questions in dispute between the parties or not.

10. Admittedly, herein this case the issues have been framed on 07.05.2020 and the application was filed when the case was set-down for hearing on interim application. It is well settled law that in a original suit, the evidence commences from the date of settlement of the issues. Thus, plaintiff has filed the present application after the commencement of trial. Therefore, they want to show due diligence as to they could not raise the proposed amendment before commencement of trial. In the affidavit accompanied to the application, plaintiff No.1 has deposed that the sale



deed executed by defendant No.1 in favour of the proposed defendant came to their knowledges when defendant No.3 has filed written statement. Order sheet reveals that defendant No.3 has filed written statement on 24.09.2019 and the same has been taken on record on 25.09.2019 by allowing the interim application No.2. Whereas, the present application is filed on 29.06.2022. But the plaintiffs have failed to explain as to what was the impediment to them to file the present application soon after defendant No.3 filed his written statement. Hence, the plaintiffs have failed to show due diligence as to why they could not raise the proposed amendment before the commencement of trial.

11. It is the contention of the plaintiffs that defendant No.3 has filed written statement and wherein they came to know that the some properties have not been included. On reading written statement of defendant No.3 goes to show that at para No.17, he has specifically contended that some joint family properties of the plaintiffs have been sold by defendant No.1 and 2 in favour of Sri.K.M.Prakash under the sale deed dated 18.06.2012 and the plaintiffs have not included the properties bearing Sy.No.372/1B1, 371/1A, 363/3,



363/1, 208/2, 207, 203 and 201 of Devarunda Village. Thus, the plaintiffs have filed the present application to include the said properties as schedule properties of the suit. Further, since the said properties have been purchased under the sale deed dated 18.06.2012, the plaintiffs wants to amend the prayer (b) in prayer column of the plaint by including the above sale deed has not binding to them.

12. The objection statement filed by the proposed defendant goes to show that he has not whispered that he has not purchased the properties which sought to be added by the plaintiffs as the schedule properties in the suit. On the other hand, he contended that he is the bonafide purchaser of the properties. Whether the proposed defendant is the bonafide purchaser or not has to be decided after holding the full fledged trial. But now, the proposed defendant has not denied that he has purchased the said properties and he has also not disputed the nature of the properties. Hence, the plaintiffs have made out ground to allow the application.



13. As observed above, the plaintiffs have failed to file the present application before commencement of trial and they have also failed to show due diligence as to why they could not raise the proposed amendment prior to commencement of trial. Admittedly, the present suit filed by the plaintiffs for the relief of partition. They are claiming that the properties which sought to be added are the joint family properties sold by defendant No.1 in favour of the proposed defendant and the same has been established. It is very pertinent to note that if the application of the plaintiffs rejected only on the ground that they failed to show due diligence as to why they could not bring the proposed amendment prior to commencement of trial, they will be deprived from exercising their legitimate rights over the said properties. On the other hand, it may lead to plaintiffs to file another suit which causes multiplicity of the proceedings. Therefore, it is the opinion of this court that the proposed amendment which sought by the plaintiff is imperative in nature. Hence, the application needs to be allowed to prevent the multiplicity of the proceedings. As such, the proposed amendment is just and proper to decide the real controversy between the



OS.No.57/2019

parties. Accordingly, this court answer point No.1 in the **Affirmative** and point No.2 **in the Negative**.

14. Point No:3: In view of the above discussions on point No:1 and 2, this court proceed to pass following:

: O R D E R :

The IA No.5 filed by the plaintiffs under order 6 Rule 17 of CPC is hereby allowed.

Consequently, the plaintiffs are hereby permitted to amend the plaint as made mentioned in the application within 14 days from the date of this order and to furnish the amended plaint.

No order as to costs.

(Directly dictated to the stenographer, typed by hm on computer, corrected and then pronounced by me in the open court on this the 06th day of FEBRUARY, 2023)

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

* - * - *

Visit ecourts.gov.in for updates or download mobile app “eCourts Services”
from Android or iOS