



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND  
JMFC., MUDIGERE.**

**DATED: THIS THE 13<sup>th</sup> DAY OF DECEMBER 2022**

**Present: Sri. Sachin.D,** B.A., L.L.B.  
C/c Addl. Civil Judge & JMFC.,  
Mudigere.

**OS.No: 193/2017**

**BETWEEN :**

Sri.Sripalaiah S/o Manjappaiah,  
Aged about 65 years,  
R/o S.K.Megal, Samse Post,  
Kalasa Hobli-577 124,  
Mudigere Taluk,  
Chikkamagaluru District. *... Plaintiff*

***(By Smt.K.Vishala, Adv.)***

**AND :**

1. Sri.Shanthappa Gowda @ Puttegowda,  
S/o Giddappa Gowda,  
Aged about 63 years.
2. Sri.Ramegowda S/o Giddappa Gowda,  
Aged about 60 years.
3. Sri.Krishnegowda S/o Giddappa Gowda,  
Aged about 57 years.



4. Sri.Lokappagowda S/o Giddappa Gowda,  
Aged about 53 years.

All are R/o "Kurdu Mane', S.K.Megal,  
Samse Post, Kalasa Hobli-577 124,  
Mudigere Taluk,  
Chikkamagaluru District.

*...Defendants*

**(By Sri.G.B.Venkatesh, Adv.,)**

**PARTIES ON IA.No16 & 17**

**BETWEEN :**

Sri.Shanthappa Gowda  
@ Puttegowda & Ors.

*... Applicants*

**AND :**

Sri.Sripalaiah

*...Opponent*

**ORDERS ON I.A.NO.16 & 17**

The defendants have filed the present applications under Order 6 Rule 17 of CPC, at the stage when the case was set-down for cross-examination of DW1, seeking an order of this court to amend the written statement as well as the counter claim as made mentioned in the applications.



**2.** Though the defendants have filed two distinct applications under Order 6 Rule 17 of CPC, they are inter connected each other and in order to save the court time, they have together for disposal through this common order.

**3.** In the affidavit annexed to the applications the defendant No.2 has deposed that the plaintiff has filed the present suit for the relief of permanent injunction and the defendants have filed the counter claim. The property bearing Sy.No.214, measuring 1 acre, situated at Samse Village, Kalasa Hobli, Mudigere Taluk has been exchanged with the property bearing Sy.No.223, measuring 1 acre, for giving the same to one Vajranabha and Jayachandra through exchange deed. Whereas, while filing the counter claim, the item No.1 of the counter claim schedule wrongly mentioned as Sy.No.223, measuring 1 acre instead of Sy.No.214/3, measuring 1 acre and the said mistake was occurred due to illiteracy of the defendants. Therefore, defendants could not give the proper information to his counsel. Further it is deposed that now in order to rectify the same, filed the present applications for amendment.



It is further deposed that after the property bearing Sy.No.214/3, measuring 1 acre and the property bearing Sy.No.223, measuring 1 acre have been exchanged, the Sy.No.214/3 has been changed as Sy.No.214/5. Whereas, due to illiteracy, while filing the written statement instead of mentioning the Sy.No.214/5, it has been mentioned as Sy.No.214P. Therefore, same has to be rectified. Accordingly, prayed for allow the applications filed by the defendants and permit them to amend the counter claim as well as the written statement as made mentioned in the applications.

**4.** The above applications have been resisted by the plaintiff by filing common objection. Wherein it is contended that already the plaintiff was lead his evidence and the plaintiff evidence was closed on the issues and defendants have come up with the present applications after the commencement of trial and therefore, the applications are filed in highly belated stage of the case. It is further contended that the defendants have moved the present applications for amendment of the written statement as well as counter claim without producing any supportive



documents for their pleadings, with an intention to grab the suit schedule property through this amendment. Further, by way of amendment, the defendants wants to insert new pleadings and there is no provisions to amend the counter claim under the law. Therefore, once the counter claim is filed, it cannot be amended, because on the basis of the counter claim, the plaintiff was took the defence on his pleadings and lead the evidence as against the counter claim filed by the defendants.

**5.** It is further contended in the objection statement that herein this case, the application filed under Order 39 Rules 1 and 2 of CPC came to be allowed, after hearing the both side and the defendants have also preferred appeal as against the said order before the Hon'ble Senior Civil Judge, Mudigere. Wherein, the appeal came to be dismissed. But during that time, the defendants have not moved any applications for amendment of counter claim or written statement. Therefore, the present applications filed by the defendants at this stage to drag the proceedings and to harass the plaintiff unnecessarily and to cause loss. Hence, if the



applications are allowed, the hardship will be caused to the plaintiff. Accordingly, prayed for reject the applications with 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 defendants is just and proper to determine the real questions in controversy between the parties?**

**2. Whether the defendants have made out due diligence that inspite of all efforts they could not raise the proposed amendment before commencement of trial?**

**3. What order?**

**7.** Having heard both side, the court perused the applications, 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 Negative***

Point No.2 : ***In the Negative***



Point No.2 : *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, they have taken together for consideration. The plaintiff has filed the present suit for the relief of permanent prohibitory injunction as against the defendants with respect to property bearing Sy.No.222/P6. On receipt of the summons the defendants have also appeared and filed their written statement as well as the counter claim and the plaintiff has also filed re-joinder to the counter claim filed by the plaintiff. When the case is set-down for cross-examination of DW1, the defendants have moved the present applications for seeking the amendment of the counter claim as well as the written statement as made mentioned in the applications. Before going into merits of the applications, it is necessary to mention the proposed amendment which mentioned in the applications, which reads thus:-



## Amendment sought under IA.No.16

ತಿದ್ದುಪಡಿ ಪ್ರಸ್ತಾವನೆಯು ಈ ಕೆಳಗಿನಂತಿರುತ್ತದೆ:-

ಈ ಕೆಳಕಂಡ ಅಂಶಗಳನ್ನು ತೆಗೆದುಹಾಕಬೇಕಾಗಿ

1. ವಿರುದ್ಧದ ಹಕ್ಕಿಗಾಗಿ ಸಲ್ಲಿಸಿರುವ ವಾದಪತ್ರದ ಶೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ಐಟಂ ನಂ.2 ಸರ್ವೆ ನಂ.223 ರಲ್ಲಿರುವ ತರಿ 1-00 ಎಕರೆ ಆಕಾರ 5-55 ಅನ್ನು ತೆಗೆದುಹಾಕಬೇಕಾಗಿ.
2. ಮತ್ತು ಶೆಡ್ಯೂಲ್ 2:- ಮೂಡಿಗರೆ ತಾಲ್ಲೂಕು, ಕಳಸ ಹೋಬಳಿ, ಸಂಸೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 214/5 ರಲ್ಲಿರುವ 1-00 ಎಕರೆ ಒಳಪಟ್ಟ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತಾಗಿದ್ದು ಈ ಕೆಳಕಂಡ ಚಿಕ್ಕುಬಂದಿಯ ಒಳಗಿರುತ್ತದೆ:-

ಪೂರ್ವಕ್ಕೆ: ಸ.ನಂ.221 ಮತ್ತು 252 ರ ಜಮೀನು

ಪಶ್ಚಿಮಕ್ಕೆ: ಹಳ್ಳ ಮತ್ತು ಸ.ನಂ.252 ಮತ್ತು 354 ರ ಜಮೀನು

ಉತ್ತರಕ್ಕೆ: ಸ.ನಂ.221 ರ ಜಮೀನು.

ದಕ್ಷಿಣಕ್ಕೆ: ಹಳ್ಳ ಮತ್ತು ಸ.ನಂ.223 ಮತ್ತು 224 ರ ಜಮೀನು.

ಎಂಬುದನ್ನು ತೆಗೆದು ಹಾಕಬೇಕಾಗಿ.

ಮತ್ತು ಈ ಕೆಳಕಂಡ ಅಂಶವನ್ನು ಸೇರಿಸಬೇಕಾಗಿ:-

ಮತ್ತು ಕೆಳಕಂಡ ಅಂಶವನ್ನು ಸೇರಿಸಬೇಕಾಗಿ:-

3. ಶೆಡ್ಯೂಲ್ 2:- ಮೂಡಿಗರೆ ತಾಲ್ಲೂಕು, ಕಳಸ ಹೋಬಳಿ, ಸಂಸೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 214/5 ರಲ್ಲಿರುವ 1-00 ಎಕರೆ ಒಳಪಟ್ಟ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತಾಗಿದ್ದು ಈ ಕೆಳಕಂಡ ಚಿಕ್ಕುಬಂದಿಯ ಒಳಗಿರುತ್ತದೆ:-

ಪೂರ್ವಕ್ಕೆ: ಇದೇ ಸರ್ವೆ ನಂಬರಿನ ಉಳಿಕೆ ಬ್ಲಾಕ್ ನಂಬರ್ 1 ರ ಒಂದನೇ ಪಾರ್ಶ್ವಗಳ ಜಮೀನು.

ಪಶ್ಚಿಮಕ್ಕೆ: ಸ.ನಂ.214/1 ರ ಜಮೀನು

ಉತ್ತರಕ್ಕೆ: ಸ.ನಂ.262 ರ ಜಮೀನು.

ದಕ್ಷಿಣಕ್ಕೆ: ಹಳ್ಳ ಮತ್ತು ಸ.ನಂ.221 ರ ಜಮೀನು.

ಎಂಬುದನ್ನು ಸೇರಿಸುವ ಸಲುವಾಗಿ.



### **Amendment sought under IA.No.17**

ತಿದ್ದುಪಡಿ ಪ್ರಸ್ತಾವನೆಯು ಈ ಕೆಳಗಿನಂತಿರುತ್ತದೆ:-

ಈ ಕೆಳಕಂಡ ಅಂಶಗಳನ್ನು ತೆಗೆದುಹಾಕಬೇಕಾಗಿ

ಪ್ರತಿವಾದಿಯು ಸಲ್ಲಿಸಿರುವಂತಹ ಲಿಖಿತ ಹೇಳಿಕೆಯ 11 ನೇ ಖಂಡಿಕೆಯ 5 ನೆ ಸಾಲಿನಲ್ಲಿ ಸರ್ವೆ ನಂ.214/ಪಿ ಎಂಬುದನ್ನು ತೆಗೆದು ಹಾಕಬೇಕಾಗಿ ಮತ್ತು 223 ಪಿ ಯಲ್ಲಿ 1-00 ಎಕರೆ ಎಂಬುದನ್ನು ತೆಗೆದುಹಾಕಬೇಕಾಗಿ.

ಮತ್ತು ಈ ಕೆಳಕಂಡ ಅಂಶವನ್ನು ಸೇರಿಸಬೇಕಾಗಿ:-

ಪ್ರತಿವಾದಿಯು ಸಲ್ಲಿಸಿರುವಂತಹ ಲಿಖಿತ ಹೇಳಿಕೆಯ 11 ನೇ ಖಂಡಿಕೆಯ 5 ನೆ ಸಾಲಿನಲ್ಲಿ ಸರ್ವೆ ನಂ.214/5 ಎಂಬುದನ್ನು ಸೇರಿಸುವ ಸಲುವಾಗಿ.

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, the order sheet of the case reveals that the defendants have moved the present applications when the case is set-down for cross-examination of DW1. Thus, already trial has been commenced. Therefore, it is incumbent to the defendants to show that why they could not raise the proposed amendment prior to commencement of trial. It is stated that the defendants are illiterate and therefore, they were not having proper information and as such, they were failed to give correct information to their counsel. It is very pertinent to note that the plaintiff has filed the suit for permanent injunction and the defendants have filed written statement along with the counter claim as against the plaintiff seeking the relief of permanent injunction. Therefore, at the time of filing the counter claim as well as the the written statement, certainly, the defendants should have been knowledge which property they have been exchanged with one Vajranabha and Jayachandra. Therefore, the contention that the defendants are illiterates and as



such, they could not give proper information to their counsel is not sustainable to hold that inspite of all due diligence, the defendants could not raise the proposed amendment prior to commencement of trial.

**11.** The materials on record goes to show that the plaintiff was examined as PW1 and he has been cross-examined at length on two hearing dates. Further order sheet goes to show that the issues have been settled on 24.09.2018 and the plaintiff was stepped into the witness box to adduce his chief-examination on 11.11.2019. Thereafter, the plaintiff evidence was closed on 25.02.2021 and the case was posted for defendants evidence. Then, on 05.04.2021, the defendant No.2 stepped into the witness box and examined as DW1 and then the case was posted for cross-examination of DW1 on 25.10.2021. Therefore, order sheet clearly seems to the court that there were many opportunities to the defendants to raise proposed amendment before commencement of trial.



**12.** Firstly, the defendants while arguing on IA.No.2 and 7 which filed under Order 39 Rules 1 and 2 of CPC, they could not been awake about their contentions. Admittedly, IA.No.7 filed by the defendants under Order 39 Rules 1 and 2 of CPC by seeking injunction while arguing the said application also they have putforth their case as mentioned in the written statement as well as counter claim. Secondly, during the cross-examination of PW1 also the defendants have not awaken about the errors which sought to be corrected in the present applications. Thirdly, at least while preparing the examination-in-chief affidavit of DW1, they have not moved these present applications. But straightaway they filed the applications for seeking amendment of the counter claim as well as the written statement at this stage when the case is set-down for cross-examination of DW1. Therefore, the applications filed by the defendants is at highly belated stage.

**13.** Once the trial has been commenced, the party who seeks the amendment as to establish due diligence why he could not raise the proposed amendment before commencement of the trial. But



herein this case, the defendants have not mentioned the proper reasons to say that they have no opportunities to raise the proposed amendment before commencement of trial, inspite of all due diligence.

**14.** It is well settled law that the court should not go merits of the amendment while deciding the applications filed for amendment of the pleadings. But herein this case it is essential to mention how the defendants have wrongly mentioned the proposed amendment in their applications even in filing the present applications at belated stage. According to the proposed amendment of IA.No.16, the defendants wants to delete the schedule No.2 i.e., the property bearing Sy.No.214/5, measuring 1 acre. But in the counter claim schedule, no such property is described. The defendants in the affidavit annexed to the IA.No.17 clearly stated that once the property bearing Sy.No.214/3 has been exchanged with the property bearing Sy.No.223 of Samse village, it has been got changed as Sy.No.214/5. But in the documents which got marked on behalf of the defendants clearly goes to show that 1 acre is



standing in the name of the defendants jointly in property bearing Sy.No.214/1 of Samse village. Therefore, at this stage in order to substantiate that the property bearing Sy.No.214/3, after exchanged with the property bearing Sy.No.223 as per the exchange deed, it has been got changed as a property bearing Sy.No.214/5, no document is placed as rightly contended by the plaintiff. Therefore, the proposed amendment which sought by the plaintiff is not at all is in the nature of just and necessary for the decision of the case.

**15.** Admittedly, after filing the counter claim, the plaintiff has raised the defence on the basis of the contentions taken by the defendants in the counter claim. Hence, if the proposed amendment is allowed and the defendants permitted to amend the written statement as well as the counter claim, the injustice will be caused to the plaintiff and it directly affects to the defence of the plaintiff which cannot be compensated in any means. Therefore, this court answer **point No.1 and 2 in the Negative.**



**16. POINT No.3:** In view of the above findings on point No.1 and 2, this court proceed to pass the following.

**ORDER**

***The IA.No.16 and 17 filed by the defendants under Order 6 Rule 17 of CPC are hereby dismissed.***

***No order as costs.***

*(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 13<sup>th</sup> day of DECEMBER 2022)*

Sd/-

( Sachin. D)  
C/c Addl. Civil Judge & JMFC,  
Mudigere.

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Both parties and their respective counsels are present.

Order on IA.No.16 and 17 pronounced in the open court (**vide a separate order.**)

**ORDER**

***The IA.No.16 and 17 filed by the defendants under Order 6 Rule 17 of CPC are hereby dismissed.***

***No order as costs.***

C/c Addl. Civil Judge & JMFC,  
Mudigere.

For cross-examination of DW1 by  
04.01.2023.

C/c **A.C.J & JMFC, Mudigere.**