



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

**DATED: THIS THE 12<sup>th</sup> DAY OF OCTOBER 2023**

**Present: Sri. Vishwanath, B.B.A., L.L.B.  
Addl. Civil Judge & JMFC.,  
Mudigere.**

**ORIGINAL SUIT No:193/2017**

**BETWEEN :**

Sri. Sripalaiah  
Aged about 65 years,  
S/o Manjappaiah,  
R/o S.K.Megal,  
Samse Post, Kalasa Hobli,  
Chikkamagaluru District.

*... Plaintiff*

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

**AND :**

1. Sri. Shanthappa Gowda  
@ Puttegowda,  
Aged about 63 years,  
S/o Giddappa Gowda.
2. Sri. Ramegowda  
Aged about 60 years,  
S/o Giddappa Gowda.
3. Sri. Krishne Gowda  
Aged about 57 years,  
S/o Giddappa Gowda.
4. Sri. Lokappa Gowda  
Aged about 53 years,  
S/o Giddappa Gowda.



All the above parties are residing at  
 "Kurdu Mane", S.K.Megal,  
 Samse Post, Kalasa Hobli,  
 Mudigere Taluk, Chikkamagaluru  
 District.

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

**PARTIES TO IA. No.XVIII AND XIX**

**BETWEEN :**

Sri. Shanthappa Gowda & Ors.

*... Applicants*

**AND :**

Sri. Sripalaiah

*... Opponent*

i	Provision under which the application is filed	U/O 6 Rule 17 of CPC
ii	Relief sought for	Amendment of written statement and counter claim
iii	The date on which the application is filed	03.06.2023
iv	Number of the application	18 & 19
v	The date on which the objections are filed by different opponents	24.06.2023
vi	The date on which the orders were passed on the said application	12.10.2023

Sd/-

**(Vishwanath A.)**

Addl. Civil Judge & JMFC.,  
 Mudigere.



**COMMON ORDERS ON I.A.NO.XVIII AND XIX**

These two applications are filed at the stage of cross examination of DW1. The defendants have filed the present applications U/O 6 Rule 17 of CPC seeking leave of this Court to amend the written statement and so also the counter claim with respect to the survey number and boundaries of counter claim of suit property.

**2.** The defendants have contended that due to oversight the Sy.No. 214/5 is wrongly mentioned as Sy.No.214P. It is the case of defendants that they have got land to an extent of 1 acre in Sy.No.214/3 of Samse Village which later renumbered as Sy.No.214/5, from one Vajranabha and Jayachandra as per exchange deed. Therefore, the proposed amendment is very much necessary to adjudicate the real controversy between the parties. On these averments, the defendants seek for allowing the applications.

**3.** On the other hand, the plaintiff has filed his statement of objections to the present application contending that the defendants have not produced any documents in support of their pleadings and they have sought for amendment in order to insert new pleadings with an intention to grab the suit schedule property. Moreover, similar applications filed by the defendants seeking the very amendment is already rejected by this Court. On these averments, the plaintiff has sought for rejection of both the applications.



4. Heard the arguments of both side and also perused the materials available on record.

5. In view of the above contentions of the both parties, the following points arises for consideration of the above application;

***1. Whether the defendants make out that the proposed amendment is necessary for determination of real question in controversy?***

***2. Whether the defendants make out that the proposed amendment do not prejudice the case of plaintiff?***

***3. What order ?***

6. The answers of this Court for the above points for consideration are as follows;

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

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

Point No.3: *As per final order*

*for the following:*

### **REASONS**

**7. POINT No.1 AND 2:** Since these points require common consideration in order to conclude the decision on the present applications, they are taken for common discussion.



The above suit is filed for the decree of permanent injunction with respect to the suit schedule property. The defendants having entered appearance have filed their written statement and also the counter claim. During the course of trial, the plaintiff has adduced evidence in support of his suit and after completion to plaintiff evidence the defendant No.2 is examined as DW1. It is at the stage of cross of PW1, the above two applications came to be filed seeking for amendment with respect to survey number and boundaries to the counter claim schedule property. The only ground urged by the defendants is that the mistake crept in mentioning correct survey number and boundaries is due to oversight.

8. It is germane here to refer the decision of Hon'ble Apex Court in the case of **M/S. Revajeetu Builders & Developers V/s M/S. Narayanaswamy & Sons & Ors**, reported in **(2009) 10 SCC 84** wherein principles are laid down for consideration of amendment applications which reads as follows:

*“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:*

*67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*

*(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*



*(2) Whether the application for amendment is bona fide or mala fide?*

*(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*

*(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*

*(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And*

*(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”*

**9.** It is also relevant to refer the decision of Hon'ble Apex Court of **Life Insurance Corporation of India V/s Sanjeev Builders** reported in **2022 SC 4256**. Wherein, Hon'ble Apex Court has laid down guidelines regarding amendment of pleadings that if the amendment is required for effective and proper adjudication of the controversy between the parties; to avoid multiplicity of proceedings and if the amendment does not result in injustice to the other side, the prayer for amendment generally shall be allowed.

**10.** Keeping in view the principles and guidelines laid down by Hon'ble Apex Court in the decisions referred supra if the case of defendants is looked into, they have filed the written statement and counter claim on 20.11.2017 and the defendants have also



submitted on IA No.II and VII which are filed seeking temporary injunctions. It is also evident that the defendant No.2 is examined as DW1 and the case is posted for his cross-examination during the stage which the present applications are filed. It is no doubt that if the party needs to amend his pleading, that should be done before commencement of trial and if such amendment is sought after the commencement of trial then the party shall have to show his due diligence with respect to the proposed amendment. Herein the present case the sole ground urged by the defendants is that the mistake sought for correction by way of amendment is crept due to oversight. This ground does not inspire the confidence of this Court so as to infer the due diligence on the part of defendants.

**11.** This apart, materials on record discloses that IA No.16 and 17 filed by the very defendants is for carrying out the amendment which is now sought in the present applications. Moreover the said applications are already been considered and rejected vide order dtd: 13.12.2022. The above being the case the very defendants filing the similar application on the similar grounds cannot be considered to be the act of due diligence on the part of defendants. It is relevant here to refer the decision of our Hon'ble High Court of Karnataka in the case of **Smt. D.N.Mangala V/s Smt.Sunanda & Ors.** reported in **ILR 2018 KAR 2022** wherein it has been held that any issue which has been decided at an earlier stage against a party it cannot be



allowed to be re-agitated by him at a subsequent stage in a same suit or in the same proceedings.

**12.** In the present case, the similar applications filed seeking similar amendments are already been decided by this Court on merits vide order dtd: 13.12.2022. Thus keeping in view the decision in the case of Smt.D.N.Mangala referred supra, the present applications filed seeking very reliefs as sought under I.A.No.,16 and 17 which are already been dismissed by this Court, does not survive for consideration. Hence, point No.1 and 2 are answered in **Negative**.

**13. Point No.3:** In view of the reasons recorded on the above Point No.1 and 2, this Court deems it fit to reject the present applications. Hence, the following:

**ORDER**

***I.A.No.XVIII and XIX filed by the defendants U/O 6 rule 17 are hereby rejected on cost of Rs.500/-.***

***For cross of DW1 by: 30.10.2023.***

*(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 12<sup>th</sup> day of October 2023, at Mudigere.)*

Sd/-

**(Vishwanath A.)**  
Addl. Civil Judge & JMFC.,  
Mudidgere.