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IN THE COURT OF CIVIL JUDGE AND ADDL. J.M.F.C, TARIKERE

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & Addl. J.M.F.C, Tarikere**

Dated this the 25th day of FEBRUARY, 2025

ORIGINAL SUIT No. 139/2019

BETWEEN:

Sri. Siddaramappa and others	PLAINTIFFS
-AND-	
Sri. K.G. Manjappa and others	DEFENDANTS

IN I.A.NO.IV

Sri. Siddaramappa and others	APPLICANTS/ PLAINTIFFS
-AND-	
Sri. K.G. Manjappa and others	OPPONENTS/ DEFENDANTS

PARTICULARS

i	<i>Provision under which the application is filed</i>	<i>Order VI Rule 16 & 17 R/w S.151 CPC</i>
ii	<i>Relief sought for</i>	<i>Amendment of plaint</i>
iii	<i>The date on which the application is filed</i>	<i>18.12.2024</i>
Iv	<i>Number of the application</i>	<i>I.A.No.IV</i>
V	<i>The date on which the objections are filed by different opponents</i>	<i>28.01.2025</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>25.02.2025</i>

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**ORDERS ON I.A. NO. IV**

1. Applicants/ Plaintiffs have filed the instant application under Order VI Rule 16 & 17 r/w Section 151 of C.P.C seeking amendment of the plaint to the effect made in the application.
2. In the affidavit appended to the application, the Applicant/ Plaintiff No.3 *inter alia* contends that the suit is one which is filed for the relief declaration and permanent injunction. The Plaintiff on enquiry with the elders of the village, has recently come to that Defendants have lost their right, title and possession over the suit schedule property and on securing the documents related to the same, the counsel for Plaintiffs advised him to seek amendment of the plaint. The amendment is only clarificatory in nature and would not change the nature of the suit or its cause of action. The amendment is very much necessary to adjudicate the matter finally and effectively. No hardship would be caused to the Defendants if the application is allowed, whereas the Plaintiffs would be put to great hardship and injury if the application is dismissed. With these contentions, the prayer is to allow the application.

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3. Resisting the application, the Opponents/ Defendants have filed their objections contending that the application is not maintainable in law or on facts and is liable to be rejected. The supporting affidavit is filled with falsity. The trial in the suit has already commenced and the application is filed while there are other applications pending before the Court, which indicates malafide intention on the part of the Plaintiffs. The applications is filed at a belated stage without making out any grounds for allowing the application. With these contentions, the prayer is to dismiss the application.

4. Heard both sides.

5. Learned Counsel for the Plaintiffs banks on the following Judgments in support of his submissions -

(i) 2023(1) KCCR 1 (SC)

(ii) (2009) 10 SCC 626

(iii) (2015) 4 SCC 182

6. Having heard the rival contentions and on perusal of the materials, the points that would now arise for my consideration are as under -

Point No.1 : Whether the amendment is necessary to determine the real questions in controversy between the parties?

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- Point No.2** : Whether the Plaintiffs show that despite due diligence, he could not have raised the matter before the commencement of trial?
- Point No.3** : What Order?

7. Now, my findings to above points is as follows -

- Point No.1** : In the Affirmative
- Point No.2** : In the Affirmative
- Point No.3** : As per the final order, for the following -

REASONS

8. **Point No.1:** The instant suit is filed seeking relief of declaration and permanent prohibitory injunction and such other ancillary relief. The suit is now at the stage of further chief of PW.1. At this stage, the Applicants/ Plaintiffs have come with the instant application seeking amendment of his plaint. It would now be significant to reproduce the proposed amendment -

1. The following paragraph has to be inserted as 1(a) to 1(i) after paragraph No.1.

1(a). Extent of 6 acres 21 guntas (including 5 guntas) in Sy.No.36 of Kallapura village, Ajjampura Hobli, Ajjampura Taluk originally ancestral property of Kodappa S/o Kadappa of Hosur village, Ajjampura Hobli, Ajjampura Taluk who was the grandfather of Defendant No.1.

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1(b). The said Kodappa S/o Kadappa mortgaged the said entire land in favour of Govindappa S/o Sannaningannana Siddaramanna of Sollapura village, Ajjampura Taluk by means of registered mortgage deed in SR.No.582/1928-29 Dated:10/12/1928 including other properties and delivered the said properties in favour of the said Govindappa. In pursuance of the mortgaged deed the name of the mortgagee entered in the Record of rights at serial No.138.

1(c). After execution of the mortgaged deed the said Kodappa or his legal heirs did not come forward to get back the property by paying the mortgaged amount and interest.

1(d). When the said Kadappa and his legal heirs have not come forward to get back the property, the said Govindappa S/o Sannaningannana Siddaramanna allowed the villagers to cultivate the said lands on the basis of lease.

1(e). In the year 1961, one Siddappa S/o Hanumappa of Gadihalli village, Ajjampura Taluk who was in possession of the entire 6 acres 21 guntas of the land sold extent of 2 acres in favour of Thimmanna S/o Subbannana Ramanna by means of Registered sale deed in SR.No.1642/1961-62 Dated:20/11/1961 and put into possession of the property.

1(f). In pursuance of the sale deed the katha of the said 2 acres got mutated into the name of Thimmanna S/o Ramanna as per MR.No.2/1961-62. In turn Thimmanna S/o Ramanna sold the said 2 acres of land in favour of Gangamma W/o Mallanna by means of Registered sale deed in SR.No.285/1970-71 Dated: 11/05/1970. In pursuance of the sale deed the katha of the said 2 acres of land got carried into the name of the Gangamma W/o Mallanna as per MR.No.04/1980/90 and even today the RTC stands in the name of said Gangamma W/o Mallanna.

1(g). Thereafter in the year 1962, the said Siddappa S/o Hanumappa of Gadihalli village, Ajjampura Taluk who was in possession of the entire 6 acres 21 guntas of the land sold extent of 2 acres 06 guntas in favour of

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Neelappa S/o Mahadevanna by means of Registered sale deed in SR.No.403/1962-63 Dated:16/03/1962 and put into possession of the property. In pursuance of the sale deed the katha of the said 2 acres 06 guntas carried out in the Record of rights and Index of land into the name of Neelappa S/o Madevanna in No.344.

1(h). Thereafter in the year 1961, the said Siddappa S/o Thimmananna of Gadihalli village, Ajjampura Taluk who was in possession of the entire 6 acres 21 guntas of the land sold extent of 2 acres 10 guntas in favour of Kariyanna S/o Thimmananna of Kallapura village, Ajjampura Taluk by means of Registered sale deed in SR.No.1017/1961-62 Dated:25/07/1961 and put into possession of the property. In turn the said Kariyanna S/o Thimmananna sold the said 2 acres 10 guntas of land in favour of mother of the Plaintiffs-Smt.Basamma W/o Chiranahalli Puttanna by means of registered sale deed in SR.No.656/1965-66 Dated: 11/06/1965 and in pursuance of the sale deed the katha of the said land which is more fully described in the suit schedule property got mutated into the name of Smt.Basamma as per MR.No.06-2253/1964-65 and the name of Smt.Basamma found in column No.12 of the RTC since 1968-69 up to 1982-83 and after demise of Basamma the Plaintiffs being the sole legal heirs came into possession of the suit schedule property without interruption from anybody much less the Defendants.

1(i). As per the sale deeds stated above now the katha of the entire land in Sy.No.36 measuring 6 acres 21 guntas of Kallapura village got mutated into the name of Gangamma W/o Mallanna to the extent of 2 acres 05 guntas, an extent of 2 acres 06 guntas into the name of Neelappa S/o Mahadevanna and remaining 2 acres 10 guntas the katha mutated into the name of Defendant No.1 & 2 to the extent of 2 acres 05 guntas instead of entering the name of the mother of the Plaintiff. Thus the katha of the suit schedule property wrongly got mutated into the name of Defendants and the very grandfather of the Defendants had lost right, title and possession over the entire land of 06 acres 21 guntas of Kallapura village,

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the Defendants cannot claim the suit schedule property based on the illegal entries in the RTC.

2. In Para 4 of the Plaint after the word Defendants the word '1 & 2' may kindly be deleted.

3. In the Plaint relief column a) after the word suit schedule property the sentence as to be added as "by virtue of registered sale deed in SR.No.656/1965-66 Dated:11/06/1965 executed by Kariyanna S/o Thimmanna in favour of mother of the Plaintiffs-Smt.Basamma W/o Chiranahalli Puttanna.

4.In the Plaint schedule after the word measuring 2 acres the number '5' may kindly be deleted and add '10'.

5.In the Plaint schedule after the word measuring 2 acres 10 guntas the sentence 1 acre 2 ½ guntas of lands stands in the name of the Defendant No.1 & 2 may kindly be deleted.

9. Before advertng to the factual matrix any further, it would be beneficial to first have a conceptual understanding of the law relating to amendment of pleadings. Order VI Rule 17 of C.P.C governs aspect relating to amendment of pleadings and the following judgement of the Hon'ble Supreme Court of India beautifully encapsulates the scope and ambit of the law relating to amendment of pleadings. In **LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITEDAND ANOTHER** reported in **2022 SCC OnLine SC 1128**, the Hon'ble Supreme Court of India has held at Para No.70 as under -

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Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact

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that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the

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amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, [2022 SCC OnLine Del 1897](#))*

10. Keeping in mind the guidelines issued by the Hon'ble Supreme Court of India in LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER (Supra) and the very provision of law, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

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11. To elaborate on the proposed amendment now sought to the made to the existing plaint, it is seen that the Applicants/ Plaintiffs are only intending to place some additional facts which were left out while preparing the plaint which in my opinion, is only in aid of the already existing averments of their plaint. Careful reading of the amendment now being sought would neither change the nature of the suit nor its cause of action.
12. Amendment of pleadings should generally be permitted where it would result in solution of real controversy between parties, without altering the cause of action. It is settled law that amendment cannot be claimed as a matter of right under all circumstances, but Court ought not to adopt hyper technical approach while deciding such prayers. In other words, Court should be liberal particularly where any prejudice suffered by the other side can be compensated by costs. Applying these principles, it is found that the proposed amendment is necessary to determine the real questions in controversy between the parties. The Judgments relied upon by the Plaintiffs at Sl.No.(i) to (iii) noted above would also speak of

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these principles. Accordingly, the Point No.1 which has arisen for my consideration is answered in the ***Affirmative.***

13. **Point No.2:** Having already answered Point No.1 in favour of the Plaintiffs, it is now necessary to examine if the amendment, with all due diligence, could not be sought before the commencement of the trial.
14. The reason now ventilated to explain the delay in seeking for the amendment is that such pleadings were left out while preparing the plaint due to lack of knowledge regarding the entire facts. The said reason assigned given the nature of the amendment sought, is found acceptable.
15. There is of course some delay in preferring the application seeking amendment but such delay though found to be inordinate, is not one which shocks the conscience of the Court so as to reject the prayer for amendment of the plaint. Hence, the delay is decided to be met with appropriate costs and accordingly, Point No.2 which has arisen for my consideration is answered in the ***Affirmative.***
16. **Point No.2:** For the foregoing reasons, the following -

ORDER

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I.A No.IV filed by the Applicants/ Plaintiffs under Order VI Rules 16 & 17 r/w Section 151 of C.P.C is hereby allowed on cost of Rs.500/-.

Resultantly, Applicants/ Plaintiffs are permitted to carry out the amendment and furnish amendment plaint both in respect of order passed on I.A.No.III and IV within the next hearing date.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 25th DAY OF FEBRUARY, 2025)

**sd/-
(Rahul Shettigar)
Civil Judge & Addl. J.M.F.C,
Tarikere.**