

KACM710014332019



IN THE COURT OF THE CIVIL JUDGE & ADDL J.M.F.C.,
AT: TARIKERE.

Present

SMT. ROOPA M .D
B.A (L) L.L.B.
CIVIL JUDGE & ADDL JMFC COURT,
TARIKERE.

O.S.No.341/2019

Dated on this the 08th day of March-2022

- Plaintiff/s** : **1. Mahadevaiah,**
S/o late Channabasavaiah,
Aged about 59 years,
Agriculturist.
- 2. B.C.Onkaramurthy,**
S/o late Channabasavaiah,
Aged about 55 years,
Agriculturist.
- 3. Maheshwaraiah,**
S/o late Channabasavaiah,
Aged about 46 years,
Agriculturist.
- 4. Smt.Jagadamaba,**
D/o late Channabasavaiah,
Aged about 58 years,
Agriculturist.

Defendants No.1 to 4 are
R/o Bankanakatte Village,
Shivani Hobli,
Tarikere Taluk,
Chikkamagaluru District.

5. Smt.Gowramma,

D/o late Channabasavaiah,
W/o Rudraiah,
Aged about 50 years,
Agriculturist,
R/o Siramagondanahalli Village,
Davanagere Taluk & District.

(By Sri.K.C.Gnanamurthy-Adv.)

V/s

- Defendant/s : 1. Yogamurthy,**
S/o late Channabasavaiah,
Aged about 60 years,
Agriculturist,
R/at Bankanakatte Village,
Shivani Hobli,
Tarikere Taluk,
Chikkamagaluru District.
- 2. Smt.Rudranamma,**
W/o late Parameshwaraiah,
Aged about 69 years.
- 3. Niranjanamurthy,**
S/o late Parameshwaraiah,
Aged about 39 years.
- 4. Mmadhumurthy,**
S/o late Parameshwaraiah,
Aged about 34 years.

Defendants No.2 to 4 are
R/o Shidlihalli, Karadi Post,
Kibbanahalli Hobli,
Tipaturu Taluk,
Tumakuru District.

5. Panchaksharaiah,

S/o late Eranna @ Hirannaiah,
Aged about 62 years,
R/o Bankanakatte Village,
Shivani Hobli,
Tarikere Taluk.

6. Indramma @ Eramma,

D/o late Eranna @ Hirannaiah,
W/o Kumaraswamy,
Aged about 58 years,
Housewife,
R/o Shidlihalli, Karadi Post,
Kibbanahalli Hobli,
Tipaturu Taluk,
Tumakuru District.

7. Halaswamy @ Halaiah,

S/o late Eranna @ Hirannaiah,
Aged about 48 years,
Housewife,
R/o Bankanakatte Village,
Shivani Hobli,
Tarikere Taluk.

(D1-3 Exparte.)

(D4-7 By Sri.C.S.Shivaprasad, Adv.)

Parties to I.A.No.III

Applicant/s: B.C.Onkaramurthy,

Plaintiff No.2

V/s.

Opponent/s: Yogamurthy & Ors.
Defendants

ORDER ON IA NO.III FILED BY THE PLAINTIFF NO.2
UNDER ORDER 6 RULE 17 R/W SEC. 151 OF CPC

The 2nd plaintiff has filed the present I.A U/o.6 Rule 17 R/w. Sec. 151 of CPC seeking to amend the plaint.

2. Allowing the said application is opposed by the defendants by filing objections.

3. Heard plaintiff and defendants' counsels.

4. The following points arise for my consideration:-

1 Whether the proposed amendment is necessary for determining real question in controversy between the parties?

2 What order?

5. My answer to the above points is:-

Point No.1 : In the Negative

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

:REASONS:

6. **Point No.1:-** In the accompanying affidavit to IA No.III, it is contended by the plaintiff that due to inadvertence; the relief sought in the present application

was not sought in the plaint relief column. The said relief is just and necessary to determine the case on hand. The proposed amendment does not change the nature of the suit and if allowed, it shall avoid multiplicity of suit. Therefore, the present application to amend the plaint.

7. Allowing the said application is opposed by the defendant No.5 to 7 and it is stated that after a long gap of one year, the plaintiff has filed the present application. The plaintiff wants to incorporate that the compromise dated 30.10.1996 is not binding and has challenged the same after 23 years. As such, the same is barred by limitation and the valuable right that has been accrued to the defendants shall be defeated. The amendment is barred by limitation and is filed at this belated stage and is liable to be dismissed.

8. Perused material on record.

9. The plaintiff by way of amendment has sought for to insert a paragraph in relief as V(a) which reads as under:-

“V(a):- For cancellation of the compromise decree passed in OS.No.38/1994 dated 03.10.1996.”

10. The present suit is filed for declaration, possession and other reliefs. When the case stood posted for defendant's evidence, the present application has been filed by the plaintiff to incorporate new relief seeking to cancel the compromise decree passed in OS.No.38/1994 dated 03.10.1996. The present suit is filed in the year 2009 and the plaintiff in the present suit has contended that the compromise decree in OS.No.38/1994 has been obtained by fraud in collusion with the original defendant No.1 without the consent of plaintiffs. As such, the compromise decree in OS.No.38/1994 is not binding on the plaintiff and defendant No.1. The defendant No.5 to 7 counsel has argued that the proposed amendment is clearly barred by law of limitation and relied on the following decisions.

1. *ILR 1996 Kan.1067 or AIR 1996 SC 647 between Munnilal V/s Oriental Insurance.*
2. *AIR 2007 SC 1478 between Shiv Gopal Vs. Sita Ram Saraugi and others*
3. *AIR 2001 SC 2607 between Vishwambhar and others Vs. Laxminarayan*
4. *ILR 1993 Kan.2072 between Karnataka Electricity Board Vs. Messrs Oriental Timber Industries.*

11. I have perused the said decision and they lay down a principle that a time barred amendment without any satisfactory explanation in the application is liable to be dismissed. The same is discussed in the reasoning

below. The plaintiff initially in the plaint has sought for a declaration that the compromise decree in OS.No.38/1994 dated 03.10.1996 is not binding on the plaintiff No.1 to 5 and defendant No.1. After the completion of plaintiff evidence and when the case stood posted for defendant's evidence, the present application has been filed. Undoubtedly, no amendment can be allowed after framing of Issues. However, the Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka in the catena of judgments have held that amendment can be permitted at the discretion of the court in that regard depends on the facts and circumstances of the case and to avoid future litigations subject to the condition that inspite of due diligence the amendment could be carried out in the earlier stage. In the case on hand, while considering the present application, the two aspects that has to be looked into is whether the plaintiff inspite of due diligence was unable to incorporate the proposed amendment at the earlier stage and the second question is whether in view of the dictum passed in the above mentioned decisions, whether the amendment is barred by limitation. The dictum passed in the above decisions clearly lays down the principle that when the proposed amendment is barred by limitation, the same is liable to be dismissed. In the case on hand, it is admitted fact that the plaintiff No.1 was the

party to the compromise entered in OS.No.38/1994. After a lapse of 25 years, the plaintiffs are questioning the compromise decree drawn in OS.No.38/1994 in this suit. In such circumstances, it is evident that the suit of the plaintiff is barred by limitation.

12. There is no single averment in the affidavit accompanying the present IA which states as to why the proposed amendment was not sought before the commencement of trial. Moreover, it is also necessary to observe that there is bar imposed to challenge the compromise in a separate suit. The said principle is laid down in AIR 2003 Kant 407 between Siddalingeshwar And Ors. vs Virupaxgouda And Ors and it is held as under:

“A bar is imposed to challenge the compromise in a separate suit because a party to a compromise is entitled to challenge the compromise as not lawful, either by filing an application in the same suit or by filing an appeal under Order 43 Rule 1A. But such remedies are available only to the parties to the suit. A person who is not a party to the suit, cannot obviously file an application in the suit, or an appeal, to challenge a compromise as being not lawful.”

13. In such circumstances, it is evident that the plaintiffs have failed to explain as to why the proposed amendment was not sought before the commencement of trial and that the proposed amendment is clearly barred by limitation. Further in view of the above mentioned dictum, it is clear that the plaintiffs should have questioned the compromise entered in O.S.No. 38/1994 in that suit itself and the same cannot be questioned in this suit. As such, allowing the said application will inflict the opposite party into irremediable character. As such, I am of the opinion that the present application deserves to be dismissed. Therefore, I answer point No.1 in the Negative and proceed to pass the following;

Point No.2:-

14. From the foregoing discussions and reasons stated therein and in view of my findings to point No.1, I proceed to pass the following:

:ORDER:

**I.A No.III filed by the
applicant/plaintiff No.2 under order VI
Rule 17 R/w 151 of CPC is hereby
dismissed.**

(Dictated to the stenographer, transcribed and typed by him, corrected, initiated and then pronounced in the open Court on this the 08th day of March-2022.)

Sd/-
(ROOPA M.D)
Civil Judge & Addl. J.M.F.C.,
Tareikere.