

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
JMFC., AT GUNDLUPETE**

**PRESENT: Sri. Deepu M.T, B.A.L., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet.**

Dated this the 6th day of SEPTEMBER, 2025

OS No:09/2023

- Plaintiffs** : **1. Nagarajachari**
S/o Late. Gopalachari
Aged about 61 years
R/at: 49/212, Ashraya Street
Halanahalli, Mysuru.
- 2. Rathnamma**
W/o Bangarachar
D/o Late. Gopalachari
Aged about 66 years
R/at: No.212/1, 3rd Cross
New Street, Udayagiri, Mysuru.
- 3. Venkatesha**
S/o Late. Gopalachari
Aged about 56 years
R/at: House No.409, Kasaba Hobli
KSRTC Layout, Halanahalli, Mysuru.
- 4. Saraswathi**
W/o Basavannachar
D/o Late. Lakshmamma
Aged about 42 years
R/at: No.538, Rajarajeshwari Temple Road
Vijayashreepura, Mysuru.
- 5. Ravi** S/o Late. Lakshmamma
Aged about 39 years

6. Kempachari

S/o Late. Lakshamma
Aged about 35 years

The petitioner No.5 and 6
are R/at: Baragi Village
Kasaba Hobli, Gundlupete Taluk.

[By Sri. SR, Advocate]

V/s

Defendants

: 1. T. Govindaraju

S/o Late. Timmachari
Aged about 63 years

2. Srikantachari

S/o Late. Timmachari
Aged about 60 years

3. T Anandachari

S/o Late. Timmachari
Aged about 58 years

The defendant No.1 to 3
are R/at: Hosuru, House No.427
23rd Ward, J.P Nagara, Gundlupete Town.

4. Lathamani

W/o Late. Nagachari
Aged about 57 years

5. Sushma

W/o Late. Nagachari
Aged about 57 years

6. Lohith

W/o Late. Nagachari
Aged about 35 years

The defendant No.4 to 6
are R/at: House No.8449/31
Hullahalli Road, 21st Ward
Uttama Furnitures Works
Nanjanagudu Town.

7. S Lokesh

S/o Late. Siddaraju
R/at: 4th Ward, 2nd Division
K.S Street, Gundlupete Town.

**[By Sri. JP, Advocate for D1 to 3]
[D4 to 7 : Exparte]**

Parties to I.A No.III

Applicants : Nagarajachari
- Plaintiffs

V/s

Opponent : T Govindaraju and Others
- Defendants

Case stage: Cross examination of DW-1

**ORDERS ON I.A.NO.III U/o VI Rule 17 OF
CIVIL PROCEDURE CODE**

The plaintiffs have filed this application under Order VI Rule 17 of CPC praying permission to amend the plaint as mentioned in the application. The proposed amendment is as follows:

ಉದ್ದೇಶಿತ ತಿದ್ದುಪಡಿ

"8. ವಾದಿಗಳು ಮುಂದುವರೆದು ಹೇಳುವುದೇನೆಂದರೆ, ಸದರಿ ದಾವೆಯ 1 ರಿಂದ 3ನೇ ಪ್ರತಿವಾದಿಗಳಾದ ಟಿ. ಗೋವಿಂದರಾಜು, ಟಿ.ಶ್ರೀಕಂಠಚಾರ್, ಟಿ. ಆನಂದಚಾರ್ ರವರುಗಳು, 4ನೇ ಪ್ರತಿವಾದಿ ಲತಾಮಣಿ, ಗಂಡ ಲೇಟ್ ನಾಗಚಾರ್ ಹಾಗೂ ಮಕ್ಕಳಾದ 3 ಮತ್ತು 4ನೇ ಪ್ರತಿವಾದಿಗಳಾದ ಸುಷ್ಮಾ ಮತ್ತು ಲೋಹಿತ್ ಹಾಗೂ 7ನೇ ಪ್ರತಿವಾದಿ ಎಸ್. ಲೋಕೇಶ್ ರವರುಗಳ ವಿರುದ್ಧ ದಾವಾ ಷೆಡ್ಯೂಲ್ 1ನೇ ಐಟಂ ಸ್ವತ್ತುವಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ 1 ರಿಂದ 3ನೇ ಪ್ರತಿವಾದಿಗಳನ್ನು ಮಾಲೀಕರೆಂದು ಘೋಷಣೆ ಮಾಡುವಂತೆ ಮತ್ತು ಸ್ವಾಧೀನಾನುಭವಕ್ಕೆ ತೊಂದರೆ ನೀಡದಂತೆ ಜಡ್ಜ್ ಮೆಂಟ್ ಮತ್ತು ಡಿಕ್ರಿ ಕೋರಿ ಗುಂಡ್ಲುಪೇಟೆಯ ಹೆಚ್ಚುವರಿ ಸಿವಿಲ್ ಜಡ್ಜ್ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಓ.ಎಸ್ ನಂ.94/2011 ರ ದಾವೆಯನ್ನು ಸಲ್ಲಿಸಿದ್ದರು. ಸದರಿ ದಾವೆಯಲ್ಲಿ ಸರ್ವೇ ನಂ.326 ರ ಸ್ವತ್ತುವು ಗೋಪಾಲಚಾರಿ ಬಿನ್ ಗೋಪಾಲಚಾರಿರವರಿಗೆ ಸಂಬಂಧಿಸಿದ ಸ್ವತ್ತುಗಳು ಆದ ಕಾರಣ ಹಾಗೂ ಸದರಿ ದಾವೆಯಲ್ಲಿ 1 ರಿಂದ 3ನೇ ಪ್ರತಿವಾದಿಗಳು ದಾಖಲೆಗಳ ಮೂಲಕ ಸರ್ವೇ 326 ರ ಸ್ವತ್ತುವು ನಮ್ಮ ಮಾಲೀಕತ್ವಕ್ಕೆ ಒಳಪಟ್ಟಿರುತ್ತದೆ ಎಂಬುವುದನ್ನು ರುಜುವಾತು ಪಡಿಸಲು ವಿಫಲರಾದ ಕಾರಣ ಸದರಿ ದಾವೆಯನ್ನು ದಿನಾಂಕ: 15.07.2023 ರಂದು ಘನ ನ್ಯಾಯಾಲಯವು ಸದರಿ ದಾವೆಯನ್ನು ವಜಾ ಮಾಡಿರುತ್ತದೆ."

2. In the annexed affidavit to the application, the plaintiff No.1 has sworn that, they recently got knowledge about the suit filed by the defendant No.1 to 3 against defendant No.4 and children of defendant

No.3 and 4 by name Sushma and Lohith and defendant No.7 in respect of Item No.1 of schedule property praying for declaration to declare that, the defendant No.1 to 3 herein are the absolute owners in possession and enjoyment of said property in OS No.94/2011 before the Additional Civil Judge Court, Gundlupete. The said suit has been dismissed. After perusal of the order passed in the said judgment, they came to know the said fact. Hence, the said fact is very necessary to implead in this suit. Hence, the plaintiffs have filed this application. If the application is allowed, no hardship will be caused to the defendants. If the application is not allowed, the plaintiff will be put to create hardship. Hence, on all these grounds, prayed to allow the application.

3. On the other hand, the defendants No.1 to 3 have resisted this application by filing objection contending that, the application filed by the plaintiffs is not maintainable either in law or in facts and liable to be dismissed. The defendants have preferred an appeal against the judgment and decree passed in OS No.94/2011 in RA No.48/2023 before the Hon'ble Senior Civil Judge, Gundlupete and said regular appeal is pending for adjudication. Hence, the said facts

cannot be considered in this suit, because the said judgment is not attained finality. It is further submitted that, on 14.06.1979 children of Timmachari S/o Gopalachari i.e., Nagachari, Lakshmikantachari and Ganeshachari have executed a agreement in favour of the father of the defendants by name Gopalachari stating that, they do not want movable and immovable property situated at Madahalli Village. Thereafter, said Thimmachari executed a Will dated 24.03.1983 in respect of Survey No.326, 327 and other properties in favour of defendant No. 1 to 3. The said Thimmachari died on 02.07.1983. After demise of said Thimmachari, the defendant No.1 to 3 became absolute owner and in possession of said properties. During lifetime of Thimmachari, the said Thimmachari has filed case before the land tribunal in LRK No.250/1976-77 in respect of Survey No.326 and 327 against his son Gopalachari stating that, the property bearing Survey No.326 and 327 belongs to the said Thimmachari and accordingly on 07.09.1997 ordered that, the said property belongs to the Thimmachari. In this regard, the defendants have mentioned in their written statement filed on 22.05.2023. Hence, the application filed by the plaintiffs is barred by time. After lapse of 2 years, the present application is filed and hence same

is not maintainable. The case is posted for cross examination of defendant witnesses and at said point of time, the present application is filed. If the application is allowed, the nature of suit and cause of action will be changed. In order to drag the proceedings, the plaintiffs have filed this application. If the application is allowed, the defendants will be put to great hardship. The plaintiffs cannot rely on the weakness of the defendants and they have to prove their ownership over the scheduled property by themselves. Hence, on all these grounds prayed to dismiss the application.

4. Heard both counsel perused the materials on record.

5. Now the points that would arise for the consideration of this Court that:

1. Whether the application filed by the plaintiffs U/o VI Rule 17 of Civil Procedure Code deserves to be allowed?

2. What Order?

6. Findings of this Court on the above points are as under:

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

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

REASONS

7. Point No.1: On perusal of records it discloses that, the plaintiffs have filed this suit against the defendants for the relief declaration of title, permanent injunction and such other reliefs. Through the present application the plaintiffs have sought for amendment as mentioned in the application for inserting para No.8 regarding dismissal of OS No.94/2011 filed by the defendant No.1 to 3. In the annexed affidavit to the application the plaintiffs stated that, recently they have got knowledge regarding dismissal of said suit. Hence, the proposed amendment is very just and necessary for adjudication of the matter. Accordingly, prayed to allow the application. On the other hand, the defendants have resisted this application stating that, if the application is allowed, nature of the suit will be changed and new cause of the action will be inserted in the suit. Further, the application filed by the plaintiffs is barred by time. Hence, prayed for dismissal of the application.

8. I have perused the pleadings, interim application, objection, materials available on record and arguments of Learned Counsel for plaintiffs and defendants. The plaintiffs have sought for amendment by way of inserting para No.8 to the plaint. According to the plaintiffs, they got knowledge recently regarding dismissal of OS No.94/2011 filed by the defendants in respect of item No.1 of schedule property and they recently obtained the information regarding the same and hence, filed this application. Hence, the proposed amendment is just and necessary for proper adjudication of the matter. The defendants have denied the application as if the application is allowed, nature of the suit will be changed. Admittedly, this suit is for declaration and permanent injunction against the defendants in respect of the plaint schedule properties.

9. Moreover, the defendants have denied the application stating that, if the application is allowed, nature of the suit will be changed and raised for new cause of action. On perusal of proposed amendment, the plaintiffs wants to insert facts regarding dismissal of OS No.94/2011 filed by the defendant No.1 to 3 for the relief of declaration of their title over the item No.1 of schedule property herein and same has been

dismissed. On perusal of the written statement, the para No.9 depicts that, the defendant No.1 to 3 have mentioned as OS No.94/2011 filed by them is pending for adjudication before the Additional Civil Judge and JMFC., Gundlupete. Accordingly, it is clear that, at the time of filing of this suit, the said suit was pending for consideration and subsequently, the said suit has been dismissed. Now, the plaintiffs wants to implead the said facts in their plaint. Hence, by allowing this application, nature of suit and cause of action will not be changed. Therefore, the objection of the defendants is unsustainable.

10. As per Order VI Rule 17 of Civil procedure code at any stage amendment may be made as may be necessary for the purpose of determining the real questions in controversy between the parties and proper adjudication of the matter. Moreover, this suit is for declaration of title and permanent injunction in respect of schedule property. Accordingly, the proposed amendment is just and necessary for the purpose of proper adjudication of the matter. Hence, it is a fit case to allow the application. This view is supported by decision reported in **AIR 1971 SC 2636 between Haridas Giridas Vs Vasadaraj Pillai, Hon'ble Court**

held that “However, negligent or careless the first omission may have been and however late the proposed amendment, the amendment should be allowed if it does not cause any injustice to the other side”. In the present case also by allowing this application no prejudice or injustice will be caused to other side. Because the plaintiffs wants to insert boundaries to the existing plaint scheduled properties. Hence, aforesaid decision is aptly applicable to the present case on hand. If the application is not allowed it will be caused to multiplicity of proceedings.

11. On perusal of material available on record, it is clear that, by allowing this application no hardship caused to the defendants. The proposed amendment is not affect the right of the parties or changed the nature of suit or caused for new cause of action. Under such circumstances, the contention taken by the defendants in their objection is not maintainable. Accordingly by allowing this application no prejudice will be caused to the other side and amendment is just and necessary for proper adjudication of the matter. Of course, the present application is filed after lapse of 4 years and the objections of defendants can be met out

by imposing cost. Hence, with these observations this Court has answered **Point No.1 in the Affirmative.**

12. Point No.2: In view of findings made supra, this court proceed to pass the following:

ORDER

The I.A.No.III filed by the plaintiffs under Order VI Rule 17 of Civil Procedure Code is hereby allowed on cost of ₹.200/-.

The plaintiffs are permitted to amend the plaint as mentioned in the application.

[Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the **6th day of SEPTEMBER, 2025**]

[DEEPU M.T]
Prl. Civil Judge & JMFC.,
Gundlupete.

(Order pronounced in the open Court (vide separate order))

ORDER

The I.A.No.III filed by the plaintiffs under Order VI Rule 17 of Civil Procedure Code is hereby allowed on cost of ₹.200/-.

The plaintiffs are permitted to amend the plaint as mentioned in the application.

For amendment and amendment
plaint 10.09.2025.

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