

IN THE COURT OF THE PRL., CIVIL JUDGE & JMFC.,
AT GUNDLUPET

Dated on this the **23rd day of November, 2024**

:PRESENT:

SRI. SHIVAKUMARA G.J.,
B.A.L.L.B.,
Prl. Civil Judge & J.M.F.C.,
Gundlupet.

OS No.225/2021

Plaintiffs : **1. Sri. S. C Maribasappa**
Aged about 58 years
S/o Channabasappa

2. Sri. S. M Nagarjunakumar
Aged about 31 years
S/o S.C Maribasappa

Both are R/at:
Shivapura Village, Hangala Hobli
Gundlupet Taluk.

[By Sri. CMG, Advocate]

V/s

Defendants : **1. Sri. Shivakumar**
Aged about 62 years
S/o Basavarajappa

2. Sri. Ankarajappa
Aged about 58 years
S/o Basavarajappa

3. Sri. Subbappa

Aged about 55 years
S/o Basavarajappa

The defendant No.1 to 3
are R/at: Shivapura Village
Hangala Hobli, Gundlupet Taluk.

4. The Panchayath Development Officer

Shivapura Gram Panchayath
Shivapura Village, Hangala Hobli
Gundlupet Taluk.

[By Sri. GR, Advocate]

Parties to I.A No.III

Applicant : Sri. S. M Nagarjunakumar
- Plaintiffs

V/s

Opponent : Sri. Shivakumar and Others
- Defendants

ORDERS ON I.A NO.III U/O 6 RULE 17 R/W SECTION**151 OF CPC**

The plaintiffs have filed application U/o 6 Rule 17 of
CPC for amendment of the plaint.

2. In the affidavit enclosed to the application it is stated that, the proposed amendment is necessary to decide the dispute between the parties. It is stated that, proposed para is not pleaded in the plaint. This suit is for permanent injunction against the defendants, but the defendants have denied the title of the plaintiffs over the suit property. Thus, the plaintiffs are filed this application for converting suit into the declaration of title over the suit property. If the application is not allowed and amendment is not carried out, the plaintiffs will be put to greater hardship. On the other hand if the application is allowed no hardship will be caused to the defendants. Therefore, the plaintiffs have prayed to allow the application.

3. The defendants have filed objections denying the allegations in the affidavit. The application filed by the plaintiffs are not maintainable either in law or on facts of the case. The proposed amendment will change the nature

of the suit and also cause of action. The defendants have stated that, this application is filed only to drag the proceedings. Hence, the defendants are prayed to reject the application.

4. Heard arguments. Perused the records.

5. Following points arises for the consideration of this Court :

1. Whether the plaintiffs have made out sufficient grounds to allow the amendment?
2. What order?

6. My answer to the above points is as under:

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

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

REASONS

7. Point No.1: The plaintiffs have filed this suit for permanent Injunction of the suit property. The present pleadings sought to be amended, the prayer of the

application, inserting to the plaint para No.6(a), 8(a) and also prayer column in plaint. The Advocate for the defendants have filed objection to IA and opposed for allowing the application on the ground that there is delay in filing the application on the ground of limitation. Even though, this suit was filed in the year 2021 and the defendant filed the Written Statement in the year 2022. The issues were framed in the year 2022. Now the stage is Evidence of the plaintiff side, at this stage the plaintiffs have filed this application.

8. Even though, the amendment can be allowed at any stage, but after commencement of the evidence the amendment can not be allowed unless the parties have not aware about the facts. But now the amendment which sought by the plaintiffs are regarding to declaration of title. This suit is filed by the plaintiffs is for the relief of prohibitory injunction. The present pleadings sought to be

amended, the prayer of the application, inserting paras to the plaint. The defendants have denied the title of the plaintiff, thus they have seeks these amendment. Hence the plaintiffs wants change the suit nature into declaration of the title.

9. The proposed amendment will not cause any loss or injustice to the defendant. This will change the nature of the proceedings, but it will not cause any inconvenience to the defendants, thus this application is allowed on subject to condition with respect to the limitation of the suit. On perusal of the objections of the defendants, the defendants are also denied the title of the Schedule property of the plaintiffs. Hence, if the amendment application is not allowed it will again lead to the another ground of litigation. Further, as per the written statement, the cloud over the suit property, thus, for removing the cloud over the suit

property, the amendment of plaint is very much necessary otherwise, the rights of the plaintiffs will have been defeated.

10. In order to avoid further litigation between the parties, When the defendants have denied the title of the plaintiffs the suit for prohibitory injunction is itself not maintainable, as there is cloud is covered on the title of the plaintiffs. Hence this Court feel it just and proper to allow the application subject to payment of cost payable, so that, should be compensated by way of costs. Hence, I answered the above **point No.1 in the Affirmative.**

11. Point No.2: In view of the answer to point No.1, I will proceed to pass the following :

ORDER

The IA No.III filed by the plaintiffs

U/o VI Rule 17 R/w Section 151 of CPC is

hereby allowed on cost of ₹.500/- payable to Court.

The plaintiffs are permitted to carry out amendment as sought in the application.

For amendment and amended
plaint.

[Typed by stenographer in my online dictation, corrected, initialed and then pronounced by me in the open court on this the **23rd day of NOVEMBER 2024**]

[SHIVAKUMARA.G.J]
Prl. Civil Judge & JMFC.,
Gundlupet.