

KAHS610041282018



**IN THE COURT OF III ADDL CIVIL JUDGE AND JMFC AT
CHANNARAYAPATNA,HASSAN**

Presided Over by SUNEETA

PRESENT:- Smt. SUNEETA ., B.A., LL.B.,

III Addl. Civil Judge & JMFC,

Channarayapatna.

Dated this the 6th day of December 2023

O.S./708/2018

Plaintiff/s :

1. Thimmegowda @ Puttaswamy S/o Dasegowda
Aged about 69 years,
2. Ramakrishna S/o Dasegowda,
Aged about 56 years,
Both are R/at: Somanahalli Village,
Nuggehalli Hobli,
Channarayapatna Taluk.
Hassan District.

V/s

Defendant/s :

1. V.N. Krishnegowda S/o Nanjegowda,
Aged about 55 years,

2. V.H.Kumar S/o Halappagowda,
Aged about 48 years,
3. V.H.Manjegowda S/o Halappagowda
Aged about 48 years,
4. Doddegowda S/o Channegowda
Aged about 75 years,
5. Channegowda S/o Channegowda,
Aged about 70 years,
6. Chandregowda S/o Channegowda
Aged about 65 years,
7. Sannadevamma W/o Thimmegowda
Aged about 70 years,
8. Manjegowda S/o Shivegowda
Aged about 48 years,

All are R/at: Valageresomanahalli Village,
Nuggehalli hobli,
Channarayapatna Taluk,
Hassan District.

I.A.No. 3

Applicant:

Thimmegowda
(Plaintiff)

V/S

Opponent:

V.N.Krishnegowda and others
(Defendants)

ORDERS ON I.A.No.3**(I.A NO.3 FILED AT THE STAGE OF FURTHER EVIDENCE)****COMMON ORDER ON I.A NO. III FILED BY THE PLAINTIFF****UNDER ORDER VI RULE 17 OF CPC**

IA NO.3 filed by the learned counsel for the plaintiff/ applicant
U/o 6 rule 17 R/w 151 of CPC for seeking permission of the Court to
amend the plaint by inserting the proposed amendment which is as
follows :

PROPOSED AMENDMENT :

After the Paragraph No.3 of the plaint to insert Paragraph No.3(a)
are as follows ;

3(a). Item No.1 of the suit schedule property is the ancestral and joint family properties of plaintiffs. During the life time of plaintiff's father by name Dasegowda sold the item No.1 of the suit property to the Thimmegowda @ Puttegowda S/o Shivanegowda of Valageresomanahalli on 12-04-1965 through sale deed. Thereafter, mother of the plaintiff purchased the suit

property as guardian of the plaintiffs and their brother by name Govinda from Thimmegowda @ Puttegowda S/o Shivanegowda of Valageresomanahalli on 30-10-1968 through sale deed. On 30-10-1968 the plaintiffs were minors, the plaintiffs were not aware about the sale transaction. Recently they came to know that, the said original document was in the possession of plaintiff's mother. Thereafter, they searched for the documents but they did not get it. On the basis of sale transaction, the plaintiffs have been in joint possession and enjoyment of the suit land".

2. In support of his application filed affidavit stating that, plaintiffs have filed suit for declaration and injunction stating that katha proceedings in respect of the item No.1 and 2 of the suit schedule property does not binding the share of plaintiffs. Further contended that Item No.1 of the suit schedule property is the ancestral and joint family properties of plaintiffs. During the life time of plaintiff's father by name Dasegowda sold the item No.1 of the suit property to the Thimmegowda @ Puttegowda S/o Shivanegowda of

Valageresomanahalli on 12-04-1965 through sale deed. Thereafter, mother of the plaintiff purchased the suit property as guardian of the plaintiffs and their brother by name Govinda from Thimmegowda @ Puttegowda S/o Shivanegowda of Valageresomanahalli on 30-10-1968 through sale deed. On 30-10-1968 the plaintiffs were minor, the plaintiffs were not aware about the sale transaction. Recently they came to know that, the said original document was in the possession of plaintiff's mother. Thereafter, they searched for the documents but they did not get it. While filing of the suit they does not aware about the said fact. Recently, the plaintiffs obtained the documents from the revenue department, thereafter, they came to know about the fact. .Hence, prays to amend the plaint.

3. On the other hand, the counsel for the defendant No.1 filed objection stated that, At the outset, this application as brought in the present form is not at all maintainable either in law or on facts of this

matter. The plaintiff has filed this false and unrighteous application without there being any justifiable and justiciable cause. The plaintiff has come up with this vexatious application in this proceeding just to harass these defendants and to have unholy profit. The plaintiff has filed this false and vexatious suit by suppressing the material facts and to knock off the valuable properties of the defendants. The entire averments made in para 2 of the affidavit are utterly false and the same are cooked up and concocted to suit the convenience of the plaintiff and to divert the fair proceedings of this matter. Further stated that, after long lapse of 4 years from the date of filing of this suit, the applicant has come up with this mischievous application. The plaintiff is not at all entitled to get amended the plaint at this juncture. The plaintiff is not at all entitled to have any relief as claimed in the suit . This application is devoid of merits. Hence, this mischievous application is devoid of merits and liable to be dismissed. Hence he prays to dismiss the application.

4. Heard both sides and perused the materials on record.

5. Now, the following points arise for my consideration:

1. Whether the plaintiff has made out sufficient ground to allow the I.A NO.3 ?

2. What order?

6. My answers on above points are as follows:-

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

Point No.3 : As per the order below
for the following.

:: REASONS ::

7. POINT No.1 :- The plaintiff has filed this suit for declaration and Permanent Injunction against the defendants. Further contended

that, suit properties are ancestral properties of plaintiff's and defendants.

8. After going through the contents of affidavit of I.A.No.3 and also objections and also after hearing the arguments of both sides on I.A.No.3, I have gone through the Order 6 Rule 17 of C.P.C., which reads as under:-

"17. Amendments of Pleadings: *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

9. On careful scrutiny of the above said provisions of law, it is crystal clear that the Court may at any stage of the proceedings may allow either of the parties to alter or amend his pleadings provided such amendment is just and necessary for the purpose of determining the real questions in controversy between the parties. Therefore, in the instant case, the suit filed by the plaintiff for the relief of declaration declaring that plaintiffs are the absolute owners of the suit properties. The plaintiff contended that suit schedule properties are the ancestral and joint family properties of the plaintiffs. When the plaintiffs verified the revenue documents, then they came to know that the defendant No.1 colluded with the revenue officials changed the katha of the suit properties in their name. The alleged katha transaction does not affect the interest of the plaintiffs. Hence, the burden is on the plaintiff to prove their case. Therefore, in order to avoid the multiplicity of proceedings and also in the ends of justice and equity, this I.A.No.3 is to be allowed and court is of the opinion that amendment sought by plaintiffs will not change the nature of the suit.

No doubt if at all the said facts wants to be denied by the defendants, the defendants have an opportunity to file additional written statement and they have right to cross examined the plaintiffs. Hence in order to avoid the multiplicity of the proceedings the application filed by the plaintiffs deserves to be allowed. Hence Court answered to the Point No.1 is **Affirmative.**

10. POINT No. 2: For the reasons stated above, I proceed to pass the following:-

ORDER

IA No.3 filed by the plaintiff under order 6 Rule 17 of CPC is hereby allowed with cost of Rs.500/.

The plaintiff shall amend the plaint and furnish the amended plaint.

(Dictated to the stenographer on-line to the computer and typed by her, corrected, signed and then pronounced by me in open court on 6th day of December 2023.)

(Suneeta)

III Addl.Civil Judge and J.M.F.C.

Channarayapatna.