

KAKB520005462013



IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.,
AT KALABURAGI

:PRESENT:

Sri Abhishek Ramachandra Joshi

B.A.L., LL.B.,

**Civil Judge & JMFC,
CHITTAPUR.**

O.S.No.59/2014

DATED THIS THE 11th DAY OF FEBRUARY-2025

Plaintiff:

Gurubasamma W/o Shankaraya,
Age: 60 years, Occ: Agriculture,
R/o: Sulahalli, Tq. Chittapur,
Dist. Kalaburagi.

Vs.

Defendant/s:

1. Banayya S/o Gurulingayya deceased
his LRs.
 - a. Annapuranamma D/o Banayya
W/o Nagayya, Age: 53 years,
Occ: Household, R/o: Ravoor,
Tq. Chittapur, Dist. Kalaburagi.
 - b. Rachamma D/o Banayya
W/o Somashekarayya, Age: 50 years,
Occ: household, R/o Kavalaga,
Tq. Afzalpur, Dist. Kalaburagi.
 - c. Sharanamma D/o Banayya
W/o Umakanth, Age 47 years,

KAKB520005462013



- Occ: Household, R/o: Wadi(Jn),
Tq. Chittapur, Dist. Kalaburagi.
- d. Shanthamma D/o Banayya
W/o Basalingaya, Age: 45 years,
Occ: Household, R/o: Avarada B,
Tq. Jewargi, Dist. Kalaburagi.
2. Umadevi W/o Gurulingayya,
Age: 44 years, Occ: Agriculture,
R/o: Kamarwadi, Tq. Chittapur,
Dist. Kalaburagi.

PARTIES TO I.A.NO.V

Applicant/ Defendant No.2:

Umadevi W/o Gurulingayya,
Age: 44 years, Occ: Agriculture,
R/o: Kamarwadi, Tq. Chittapur,
Dist. Kalaburagi.

(By Smt. M.V.L., Advocate)

Vs.

Opponent/Plaintiff:

Gurubasamma W/o Shankaraya,
Age: 60 years, Occ: Agriculture,
R/o: Sulahalli, Tq. Chittapur,
Dist. Kalaburagi.

(By Sri. H.M.P., Advocate)

KAKB520005462013



ORDERS ON IA No. IV FILED
U/O VI RULE 17 OF CPC.

1. Plaintiff has filed the present application seeking to amend the plaint. It is contended by plaintiff that, after filing of suit she came in knowledge regarding the document executed by defendant NO.1 in Cavour of defendant No.2. The alleged document is made as benami transaction and it is liable to be declared as null and void and not binding on the plaintiff. Accordingly, plaintiff sought for allowing the present application.

2. Per contra, defendants have filed objection to present application. The defendants have denied the contention taken by the plaintiff. It is specifically submitted by the defendants that, the suit is pending for more than 10 years and the plaintiff without assigning any reasons in the affidavit annexed with the application has filed the present application. The plaintiff in her affidavit has stated that, she came in knowledge about the gift deed only when defendants filed the said document at the time of leading evidence. It is submitted that, in the written statement itself the defendants have taken the plea regarding the gift deed executed by defendant No.1 in favour of defendant No.2. Even the present plaintiff has filed revision appeal No. 98/2009-10 before the Assistant Commissioner and the said appeal is dismissed on 18-01-2011. Hence, as the plaintiff was in the knowledge about

KAKB520005462013



the gift deed, the amendments sought in the application is hopelessly time barred. Accordingly, defendants sought for dismissing the present application.

3. Heard, both sides.
4. The following points are arise for my consideration.

Point No.1: Whether the plaintiff has made out sufficient ground to allow the present application?

Point No.2: What order?

5. My answer to above points is as under:

Point No.1: In the Negative.

Point No.2: For the following;

REASONS

6. The present suit is filed by the plaintiff for the relief of Declaration and permanent injunction. It is the case of the plaintiff that, her ancestor by name Ningayya and Gurulingayya were the brothers. The suit property was ancestral property. As per the oral partition the suit property has fallen to the share of

KAKB520005462013



Ningayya. Defendant No.1 without any right or interest over suit property illegally created false documents showing himself to be son of Gurulingayya and got his name mutated with regard to suit property. When panchayat was held during the life time of the husband of plaintiff, the defendant No.1 had agreed to transfer the suit property in the name of plaintiffs husband. However, at that time plaintiffs husband died and misusing such facts, defendant No.1 has unlawfully transferred the suit property in the name of defendant No.2. Hence, claiming that, plaintiff is still the owner of suit property, the present suit is filed. During the pendency of the suit the plaintiff filed the present application seeking to amend the plaint. In the application it is contended by plaintiff that, when defendant produced records in the court, plaintiff has learnt that, defendant No.1 has illegally executed gift deed in favour of defendant No.2 on 20-11-2008. Hence, by amending the plaint, the plaintiff wants to incorporate the pleadings with regard to gift deed not being binding on the plaintiff and it has to be declared as null and void.

7. To the said contention defendants have filed detailed objections. The defendants in their written statement and in their objection, have denied the case of plaintiff. Defendants has specifically contended that, the suit property was the property of Gurulingayya and after his death, the defendant No.1 being the

KAKB520005462013



only son, his name is entered in the concerned records. Now defendant No.1 has gifted the suit property in favour of defendant No.2 being his only daughter due to love and affection towards her. The gift deed is executed on 20-11-2008 and since then defendant No.2 has become the owner of suit property. The plaintiff who is no where concerned with defendants family had challenged the mutation under which the name of defendant No.2 was entered in the concerned records. The said appeal before Asst. Commissioner Sedam is dismissed on 18-01-2011 and hence the plaintiff had knowledge of execution of the gift deed in favour of defendant No.2 by defendant No.1 since 2009. That being the case the present application to amend the plaint and incorporate such pleadings is barred by limitation and hence such application has to be rejected with heavy cost.

8. I have carefully perused the materials available on record. In the present application the plaintiff is seeking to amend the plaint and incorporate the pleadings with regard to gift deed executed by defendant No.1 in favour of defendant No.2 as null and void and not binding on the plaintiff. The only dispute in this application is that, the present application is seeking to incorporate time barred relief and hence such application cannot be entertained.

8.1 The provisions of order VI Rule 17 CPC clearly mentions that, at any stage of proceedings the court may either allow the

KAKB520005462013



party to alter or amend his pleadings, if such amendment is necessary for the purpose of determining the real controversy between the parties. However, rider is given that, if the application is filed after commencement of trial, due diligence has to be shown by the party as why such pleadings was not raised before the commencement of trial.

8.2 In the present case admittedly the trial has already started. The plaintiff in the application to show her due diligence, is only stating that, she came to know regarding the gift deed executed by defendant No.1 in favour of defendant No.2 when the documents were furnished by defendants. However, when the written statement filed by defendants is seen, the defendants on 12-11-2014 have clearly mentioned that defendant No.1 has gifted the suit property in favour of defendant No.2 on 20-11-2008. Thus, it is clear that, the plaintiff was aware of the said deed in the year 2014. The gift deed executed by defendant No.1 in favour of defendant No.2 is a registered document. Hence, as per the law, the registration itself would be the knowledge to the public at large. The present application is filed in the year 2024 which is after lapse of 16 years after the execution of the document and 10 years after the written statement. The limitation period for seeking any declaration with regard to a registered deed is 3 years from the date of knowledge. Thus, the relief now sought to be

KAKB520005462013



incorporated is beyond the period of limitation. The plaintiff has not explained as to why she has kept quiet for so long before filing the present application. This shows that, the plaintiff was not diligent enough to file the application and seek relief within limitation period.

8.3 A similar point had arisen before the ***Hon'ble Apex Court in Radhika Devi Vs Bajarangi Singh and others ((1996) 7 SCC 486)***. In that case, the party by filing amendment application wanted to seek declaration that the gift deed was obtained illegally and fraudulently and therefore it was ineffective and not binding on the party. Such amendment was sought after lapse of 3 years from the date of written statement in which the defendant had explained about the gift deed. The Hon'ble Apex Court in that background, has held that, when the defendant in his written statement had specifically stated about the gift deed made in his favour and the plaintiff having not taken any steps within the period of limitation of 3 years, the plaintiff by filing application for amendment cannot incorporate, the time barred relief. In this case also, the defendants in their written statement had expressly mentioned about the gift deed. The written statement was filed in the year 2014 and till 2024, the plaintiff has not taken any action. Thus, as per the ratio laid down by the Hon'ble Apex Court, the

KAKB520005462013



present application to incorporate time barred relief is not maintainable.

8.4 Similarly, ***The Hon'ble Apex Court in Revajeetu Builders and Developers Vs M/s Narayan Swamy and sons and others reported in 2009 AIR SCW 6644 at para No.67*** has held that, as a general rule the court should decline amendment if a fresh suit on the amended claims would be barred by limitation on the date of application. In the present case also the relief which is sought under the application, is barred by limitation. Accordingly, the amendment sought by the plaintiff is not acceptable. Accordingly, in view of discussions made above, this court is of the opinion that, the plaintiff is not entitled for the relief sought in the application. Thus, point No.1 is answered in the negative.

9. Point No.2: For the reasons stated while discussing point No.1, this court proceeds to pass the following:

ORDFR

IA No.IV filed by plaintiff U/o VI Rule 17 of
CPC dated 03-02-2024 is hereby rejected.

**Civil Judge and JMFC,
Chittapur**

KAKB520005462013



**(Order Pronounced in the open court vide
separate Order)**

ORDFR

IA No.IV filed by plaintiff U/o VI Rule 17 of CPC dated 03-02-2024 is hereby rejected.

Clarification in required before passing orders on IA No.V.

For clarification on IA No.V.

Call on 19-02-2026

**Civil Judge and JMFC,
Chittapur.**

KAKB520005462013

