

KAKB620017012021

**IN THE COURT OF CIVIL JUDGE AND JMFC., JEWARGI.**

**Present:- Sri.Kashinath V. Uppar, B.Sc., LL.B.,  
Civil Judge and JMFC,  
Jewargi.**

**Dated : This the 23<sup>rd</sup> day of August-2024**

**O.S.No.94/2021**

**Between:****: Plaintiffs**

Syed Bee W/o Syed Sab, (D/o late Kasimsab Gangapur)  
Age: 45years, Occ: Agriculture & household,  
R/o Ijeri, tq: Jewargi,  
Dist: Kalaburagi.

**(By Sri. J.V.H., Adv.,)**

V/s

**: Defendants**

1. Jainabee W/o late Khasim Sab Gangapur,  
Age: 65years, Occ: Agriculture & household,  
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
2. Lal Ahmad S/o late Khasim Sab Gangapur,  
Age: 40years, Occ: Agriculture,  
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
3. Syed Sab S/o late Khasim sab Gangapur,  
Age: 40years, Occ: Agriculture,  
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
4. Ameena Begum W/o Abdul Basha  
(D/o late Khasim sab Gangapur),  
Age: 34years, Occ: Agriculture & household,  
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
5. Imam sab S/o Abdul Sab,  
Age: 36 years, Occ: Agriculture,  
R/o Ammapur, tq: Shorapur, dist: Yadagiri.
6. Abedabegum W/o Mohd. Jaffer Ladaf,

KAKB620017012021



Age: 38 years, Occ: Agriculture,  
R/o Ijери, tq: Jewargi, dist: Kalaburagi.

7. Shakuntala W/o Devindra Sajjan,  
Age: 28 years, Occ: Agriculture & household  
R/o Ijери, tq: Jewargi, dist: Kalaburagi.

**(by Sri. B.B., Advocate)**

1	Provision under which the application is filed	U/o.10 Rule-1(2) of cpc and U/ Order 6 Rule 17 of CPC
2	Relief sought for	Implead the proposed defendant No.4 and Amendment of plaint.
3	The date on which the application is filed	31.03.2023
4	Number of application	I.A.No.5 and 6
5	The date which the objection are filed by different opponents	FILED
6	The date on which the orders were passed on the said application	23-08-2024

**(Kashinath V. Uppar)**  
**Civil Judge & J.M.F.C.**  
**Jewargi.**

**ORDER ON IA NO.5 AND 6**

The plaintiff has filed this application to permit her to implead proposed defendant No.8 and to amend the plaint by adding the proposed amendment which is as hereunder:

2. **The proposed amendment:**

KAKB620017012021



In the cause title the following person may be added as defendant No.8 "Iramma W/o Yankappa Awaradi, age: 50 years, Occ: Agriculture, R/o Ijeri, tq: Yadrami, dist; Kalaburagi.

3. After the para No.6 the following may be added as para No.6(a) "It is submitted that the defendant No.2 during pendency of suit as executed nominal sale deed bearing document No.3123/2022-23 dated 11-07-2022 in favour of defendant No.8 to dupe the share of plaintiff. The defendant No.2 has no independent right to sale the suit property as the suit properties are matruka properties of parties to the suit and the plaintiff has got share in its hence the sale deed is fit to be declared as not binding on the share of plaintiff.

4. In para No.8 the following may be added as para No.8 (I) "The relief of declaration that, the registered sale-deed document No.3123/2-22-23 dated 11-07-2022 is not binding on the right and share of plaintiff is valued as per Section24 (d) of KCF and SV Act at Rs.1000/- and court fee of Rs.25/- is paid.

5. The plaintiff has sworn to the affidavit and stating that, she filed the suit against defendants No.1 to 7 for partition and separate possession. During pendency of the defendant No.2 executed registered sale-deed bearing document NO.3123/2022-23 dated 11.07.2023 in favour of proposed defendant No.8 only with an intention to create third party rights and harass the plaintiff. The defendant No.2 has no independent right to alienate the suit property. Suit property is

KAKB620017012021



the Matruka property. Already this court was restrained the defendants not to alienate the suit property by granting temporary injunction order.

6. In view of alienation of the suit property the plaintiff has to amend the plaint as per memo of proposed amendment and to seek the declaration that the sale-deed executed by defendant No.2 is binding on the right and share of the plaintiff. The proposed amendment is necessary to decide question involved in the suit.

7. Counsel for proposed defendant No.5 objection to IA No.5 and 6 that, the application filed by the plaintiff to implead the proposed defendant No.8 is apply lis-pendency purchase. Hence, he need to be add as party to the suit. Even application is filed during pendency of suit need not be challenged on the grounds of sale. On these grounds, IA No.5 and 6 are liable to be rejected.

8. On considering the I.A. and affidavit, the points that would arise for my consideration as under:

1. Whether I.A.No.5 and 6 are filed by the plaintiff are deserve to be allowed and whether proposed amendment is necessary to adjudicate the real question of controversy in between parties ?
2. What order ?

KAKB620017012021



9. Heard the arguments on interim applications.

10. The plaintiff counsel vehemently submits that the proposed defendant No.8 is necessary and proper parties in order to effective adjudication of the suit and also the proposed amendment is necessary to adjudicate the real matter in controversy between the parties. The proposed amendment does not change or alter nature of the suit, cause of action. He further argued that, court having discretionary to allow the application for amendment so that, multiplicity of proceedings can be avoided and amendment which do not totally alter the character an action should be readily granted. Further he argued that, if it is necessary for the purpose of determining the real controversy then amendment can be allowed at any stage of proceedings. He further argued that, court must not refuse, bonafide, legitimate, and necessary amendments in the pleadings if no prejudice would cause to be other side. In the present case no prejudice would be cause to the defendants therefore, he prayed to allow the application.

11. My answers to the above points are as under:

Point No.1:- Affirmative.

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

### **RESSONS**

12. **Point No.1:-** Admittedly plaintiff has filed this suit for partition and separate possession against defendants. During the pendency of the suit, the defendant No.2 sold suit property to

KAKB620017012021



the proposed defendant No.8. Now, the plaintiff has accrued the right against the proposed defendant No.8. Now the nature of the suit property is changed. Therefore, the proposed amendment and impleading of proposed defendant No.8 is necessary to determining the real question of controversy between the plaintiff and defendants. The nature of the suit property slightly changed because of the defendant No.2 sold the suit property in favour proposed defendant No.8. Hence, plaintiff may permitted to amend the plaint and to implead proposed defendant No.8.

13. It is well establish the principle of law that, while dealing with amendment application the court has two aspects, firstly the court has to be consider does the proposed amendment is necessary to adjudicate the real controversy in between the parties and second one is that, the court has to consider does the proposed amendment would affect the right of other side. In order to amend plaint the plaintiff has to satisfy the above two aspects, on perusal of proposed amendment it can be said that proposed amendment is required for adjudication of real controversy in between the parties. More ever, proposed amendment will not prejudice the rights of defendants,

14. **At this stage, it is useful to refer the decision reported in 2016 (2) Karnataka L.J.448 Bijith International Builders, Bangalore V/S. Dia's Varghese, C and other**, wherein Hon'ble High Court of Karnataka pleaded to held that, court to allow the amendment for determining real

KAKB620017012021



questions in controversy provided not to cause injustice or prejudice to other side, purpose it is to minimize litigation, however, pleading cannot be claimed as a matter is right, party have prove inspite of due diligence could not raise plea before trial.

15. This is a suit for partition and separate possession in respect of suit schedule property. Now the nature of suit is changed because of the defendant No.2 sold out the property in favour of proposed defendant No.8. The proposed defendant No.8 is necessary and proper party to the suit for effective adjudicating. The proposed amendment and impleading of proposed defendant No.8 is necessary and if in case the proposed amendment and impleadment is not permitted it will leads to multiplicity of proceedings and also affected the right of the plaintiff. Moreover, the proposed amendment and implead is appeared to be bonafide purpose. Which will assist the court in order to adjudicate the matter effectively. In case, the suit is disposed of without the proposed amendment and impleadment, then in future it will lead to complications which will result in multiplicity of proceedings.

2. At this stage, it is also useful to refer to decision reported in **(2015) 4 SCC 182 in between Mount Mary Enterprises V/S. Jivratna made treat (p) Ltd.,.** wherein it was held that, "As per provisions of the order 6 Rule 17 of CPC, the amendment application should be

KAKB620017012021



normally granted unless by virtue of amendment nature of suit is change or some prejudice is cause to the defendants”.

16. In this present case also the proposed amendment not affected or prejudice the right of the defendant nor will it change the nature of the suit. More over if the application is allowed and amendment is carried out the defendants will have opportunity to file the additional written statement. Therefore, I am of the view that, the plaintiff has made out sufficient ground and proposed amendment and impleading of proposed defendant No.8 is necessary for proper adjudication. Therefore, I am of the opinion that, the proposed applications are deserves to be allowed. Hence, I answered Point No.1 in the Affirmative.

17. **Point No.2:** In the light of above discussion, I proceed to pass the following:

### **ORDER**

I.A. No.5 filed by the plaintiff filed U/o.1 Rule-10(2) and IA No.6 U/o.6 Rule 17 of CPC, is allowed.

The plaintiff is hereby permitted to implead the proposed defendant No.8 and to carryout the necessary amendment in the plaint and furnish amendment plaint copy.

No order as to cost.

(Dictated to the Stenographer directly on computer, same is typed by him,

**KAKB620017012021**



revised and corrected by me, signed by me and then pronounced in the open court on this the 23<sup>rd</sup> day of August, 2024.)

**(Kashinath V. Uppar)**  
Civil Judge & J.M.F.C.  
Jewargi.

Visit [ecourts.gov.in](https://ecourts.gov.in) for updates or download mobile app “eCourts Services” from Android or iOS