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KAKL200000822009



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND JMFC
AT BANGARPET**

PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S. NO.182/2009

DATED THIS 17TH DAY OF DECEMBER 2024

PLAINTIFF/S : **Yadhavan Dead by LR's
Shakuntala & others.,**

(Rep. by Sri.**K.M.V.**, Advocate)

-V/S-

DEFENDANT/S: **N.Venugopal & others.,**

(D1 Rep. by Sri.**K.M.**,

D2, D5 Rep. By Sri.**K.V.P.**,

D6 Rep., by Sri.**B.L.N.**,

D7 to D15 Rep by Sri.**N.M.G.**, Advocates.,

D4(a) to D(c) **absent**)

PARTIES TO I.A. NO.32

Applicant/
Plaintiff:

**Yadhavan Dead by LR's
Shakuntala & others.,**

-V/S-

Opponent/
Defendant:

N.Venugopal & others.,

ORDER

The plaintiffs have filed the application seeking an order of this Court to amend the plaint, in the interest of justice and equity.

PROPOSED AMENDMENT:

Amendment of plaint, and Add Para after 8, as 8(a) & 8(b), and Add in relief column after (a) add as (a)(a).

8(a) That the plaintiffs further submits that during the pendency of the suit defendant No.2 & 5 allegedly have executed a register document in favour of 6th defendant dated 31.03.2015, related to suit property and defendant No.2 & 5 who have no exclusive right to encumber the property in favour of 6th defendant, and 6th defendant not accrued any right, on the said document it is not affect the any right of the plaintiffs in any manner, and the alleged document allegedly executed by the defendant No.2 & 5 in favour of 6th defendant is not legal, valid and not legal necessity nor the benefit of the family of plaintiffs, and said document is not binding upon the plaintiffs.

8(b) That the plaintiffs further submits that during the pendency of the suit defendant No.2 & 5 allegedly have executed a register document in favour of defendant No.7 to 15 dated 23.05.2022 related to suit property and defendant No.2 & 5 who have no exclusive right to encumber the property, and defendant No.7 to 15 not accrued any right, on the said document it is not affect the any right of the plaintiffs in any manner, and the alleged document allegedly executed by the defendant No.2 & 5 in favour of defendant No.7 to 17 are not

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legal, valid and not legal necessity nor the benefit of the family of plaintiffs, and said document is not binding upon the plaintiffs.

Add in relief column after (a) add as (a) (a), and (a)(b)

(a)(a). The document executed by defendant No.2 & 5 in favour of 6th defendant dated.31.03.2015 is not legal, valid and not legal necessity nor the benefit of the family of plaintiffs, and said document is not binding upon the plaintiffs.

(a)(b). The document executed by defendant No.2 & 5 in favour of defendant No.7 to 15 dated.23.05.2022 is not legal, valid and not legal necessity nor the benefit of the family of plaintiffs, and said document is not binding upon the plaintiffs.

2. In the affidavit accompanying the application it is stated that, the plaintiffs have filed the present suit seeking the relief of partition and separate possession. It is stated that during pendency of the suit on similarly the defendant No.2 & 5 have sold the suit property under the document dated.31.03.2015 in favour of defendant No.6. The defendant No.2 to 5 have no exclusive right to sell the property in favour of defendant No.6. The defendant No.2 and 5 have also executed a document dtd.23.05.2022 in favour of defendant No.7 to 15 related to suit schedule property. After acquiring knowledge of the said facts the plaintiffs have impleaded the

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defendant No.6 and 7 to 15 as parties to the suit. It is just and necessary to plead about these recent developments that have taken place during the pendency of the suit and to seek such reliefs. Therefore, the applicant prays to allow the application.

3. The defendant No.2 and 5 have filed the objections to the application in hand. In the objections it is stated that the application is neither maintainable in law nor on facts. It is stated that the contents of the affidavit are all false. It is contended that the trial is already completed the matter is remanded back to trial the suit on limitation ground of the plaintiff and that the plaintiff is know the facts the suit schedule property belongs to the defendant No.2 and 5 intentionally filed the suit to grab the suit schedule property. It is well laid principle of law when the nature of the case is changed such amendment cannot be allowed. Hence, the defendant No.2 and 5 have prayed to reject the application.

4. I have heard the counsels for plaintiff and defendants on I.A No.32 and perused the material available on record.

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5. The following points arise for determination:-

1. Whether the proposed amendment is necessary to determine the real question in controversy ?
2. What order?

6. After hearing the arguments and on considering the relevant materials on record, my findings on the above points are hereunder:-

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 the suit seeking the reliefs of partition and separate possession with respect to suit schedule properties. The present application came to be filed when the case was posted for cross examination of PW1.

8. The plaintiffs have filed the application seeking the amendment of the plaint to incorporate certain facts and also additional prayer. As per the application in hand it appears

that, the plaintiffs are intending to add a paragraph and prayer with respect to developments that have taken place with regard to suit schedule properties. Upon perusal of the pleadings and other materials on record it appears that the existence of right and claim over suit properties of the parties to the suit is in dispute. The question with regard to existence and non existence of right over the suit schedule properties will be determined only after the full fledged trial. The burden of proving the entire case is on the plaintiffs. Since certain developments are alleged to have taken place by the acts of very same defendants that to during the pendency of litigation in the court the plaintiffs cannot be found fault with in bringing it to the notice of the Court by seeking an amendment to the plaint.

9. It cannot be called that the proposed amendment is for any malafide reason. First the proposed amendment does not fundamentally change the nature or character of the suit and it does not make out any case for the parties but rather brings certain alleged subsequent development on record

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which appears to have been necessitated the plaintiffs to place on record in the form of amendment. This being the case the proposed amendment will not put the defendants to any hardship since they would get any opportunity to file their additional written statement if they fell so, and to contest the matter which according to them they were doing hitherto. The proposed amendment appears just and necessary for determining the real question in controversy between the parties. Hence, in the light of above discussion the application deserves to be accepted. ***Hence, I answer point No.1 in the Affirmative.***

10. Point No.2:- In view of the discussion made above, I proceed to pass the following:-

ORDER

I.A.No.32 filed by the plaintiffs under
Order 6 Rule 17 R/w. Section 151 of CPC
is hereby allowed.

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The plaintiffs are to carry out the amendment and furnish the amended plaint by next date of hearing.

No order as to costs.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **17th December 2024.**)*

**Sd/-
I Addl., Civil Judge and J.M.F.C.,
Bangarpet.**