

KAKL300005642021



IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,

AT MALUR

: PRESENT :

Smt. **Lathadevi, G.A.**, B.A.L., LL.B., LL.M.,  
Senior Civil Judge & JMFC.,  
Malur.

Dated this 10<sup>th</sup> day of April, 2023.

:: **O.S. No.177/2022** ::

**Plaintiff/s** : **Smt. Saraswathamma,**  
D/o Late Mallappa,  
W/o Muniswamy M,  
Aged about 50 years,  
R/a. House No.436,  
2<sup>nd</sup> cross, Dharmarayanagara  
Pallavi colony,  
Bangarpet main road,  
Kolar Town & District.

*(Reptd., by Sri.**K.V.S.R.**, Advocate)*

- **V/s.-**

**Defendant/s** : **1. Sri. Chandrappa,**  
S/o late Anjinappa,  
Aged about 52 years,  
R/a Patalamma Nilaya,  
Nanjamma Hospital road,

Maruthi Extension,  
Malur Town & Taluk,  
Kolar District.

**2. Sri. M.G. Gangaram Singh,**  
S/o Chandra Singh,  
Aged about 54 years,  
R/a. Mathankapura Village,  
Masthi Hobli, Malur Taluk,  
Kolar District.

**3. Smt. R. Vijayalakshmi,**  
W/o R. Venkatesh,  
Aged about 65 years,  
R/a. Agrahara Beedi,  
G.H.P – School road,  
Malur Town & Taluk,  
Kolar District.

**4. The Spl. Land Acquisition  
Officer- KIADB,**  
No.1, KIADB No.39,  
Shanthi Gruha,  
Bharath Scouts & Guides  
Building, 4<sup>th</sup> floor,  
palace road,  
Bangalore- 560 001.

*(D.1 & 3 Reptd., by Sri.S.A.K, Advocate)*

**ORDERS ON I.A.No.5**

**FILED BY THE PLAINTIFF, DATED 09.02.2023**

The plaintiff's advocate has filed the above IA., **U/o 6 Rule 17 r/w Sec.151 of CPC.**, along with supporting affidavit seeking to amend the plaint, it is summarised as follows;

That the suit schedule property is the granted property to Mallappa that, the plaintiff is the daughter of the said Mallappa and Yelagamma.

That the said Yelagamma, through her first husband had begotten Gowramma and Lakshamma, subsequently, Yelagamma had married Mallappa, through Mallappa, Yelagamma had begotten the plaintiff.

That after the death of the Mallappa, plaintiff is the sole heir to inherit, but the brother of Mallappa without knowledge of plaintiff had alienated suit schedule property, the plaintiff came to know recently about it and contends that, the said sale deeds are illegal.

**2.** *In the supporting affidavit, the plaintiff has deposed that, she has filed a suit against the defendants for the relief of declaration of title and permanent injunction.*

**3.** That the amended pleadings as sought along with above IA, though it had been informed to earlier advocate, it was not pleaded in the plaint. Subsequently, the plaintiff had changed the advocate, at that time plaintiff came to know that, about the non-pleading of the intended amended facts.

**4.** That issues are not yet framed, if the above IA., is allowed, defendants will be having an opportunity to file additional written statement, as the evidence is not yet commenced, IA., is sought to be allowed, in order to meet the ends of justice.

Further pleads that, if the above IA., is not allowed, plaintiff will be put to great injustice and it leads to multiplicity of proceedings. In view of the above contentions, ***prays to allow the above IA.***

**5.** *The defendants No.1 and 3 have adopted the written statement contentions as part and parcel of the objections to the above IA. Further have contended that, the plaintiff has not made out grounds to allow the above IA, that above interim application is filed, in order to create second story to over come prior pleadings made in the written statement. The plaintiff has not stated, as to why she had not pleaded the proposed amendment earlier. The proposed amendment sought is a after thought to nullify the defence taken by the defendants No.1 and 3.*

**6.** *That defendants have produced the documents to prove the fact that, Lakshamma and Gowramma are the daughters of late Mallappa and Yalagamma. That the proposed amendment is not necessary to decide the suit, as the plaintiff is claiming that, Gowramma and Lakshamma, as the daughters of late Muniswamy, but the judgment and decree produced by the defendants, wherein is held that, late Yalagamma is not the wife of Muniswamy.*

**7.** That the plaintiff has filed the above interim application seeking for the proposed amendment to get an favourable order on IA., to deprive the defendants No.1 and 3 from getting the compensation amount. The plaintiff has taken a contention that, Mallappa and Kenchappa @ Muniswamy, as the brother of Mallappa. That in fact plaintiff is also the daughter-in-law of said Kenchappa @ Muniswamy. K. Muniswamy is the husband of plaintiff.

**8.** That the plaintiff has sworn to false affidavit in support of the interim application, there are no grounds made out for seeking for the proposed amendment, except the grounds of changing of advocate, there are no grounds made out to allow the above interim application.

**9.** That present court has relied upon the affidavit filed by the plaintiff, wherein, the plaintiff has stated that, she is the foster daughter of late Mallappa, but has scratched out the word "ಸಾಕು" in the affidavit. That the plaintiff is the daughter of Lakshamma one of the daughter of late Mallappa. In fact, the granddaughter of Gowramma has filed a suit for partition against the plaintiff and defendants, wherein, the present plaintiff is arrayed as defendant No.8 in OS No.628/2022 pending before the present court. In the said suit also, the affidavit of family tree has been filed, wherein, plaintiff has been shown as the daughter of one Lakshamma. In view of above

contentions, ***defendants No.1 and 3 prays to dismiss the above IA., with costs.***

**10.** The defendants No.1 and 3 have objected to above IA., contending that, above IA., is a created second story to overcome with contention of written statement of defendants No.1 and 3. That already the issue that, Gowramma and Lakshamma as daughters of Yelagamma through Muniswamy is denied and decided by the judgment produced by the defendants. The plaintiff contending that, Kenchappa @ Muniswamy are the brothers, but in fact the plaintiff is the daughter-in-law of the said Kenchappa @ Muniswamy, that plaintiff has sworn to a false supporting affidavit. That granddaughter of Gowramma had filed suit to partition, wherein, defendant No.8 in OS No.623/2022 pending before the present court, wherein, plaintiff has been shown as daughter of Lakshamma. With above contentions, ***prays to dismiss the above IA.***

**11.** Heard both sides and perused the materials available on record.

**12.** The case of the plaintiff pleaded in plaint is that, the suit schedule property is a government gomala land, was granted in favour of father of Mallappa, but in the plaint there is a correction made as '**father in blue ink before the word**

**Mallappa'**, which does not has any counter correction as to on which date and by whom the said correction is made, which reveals that, after typing plaint pleading correction made.

**13.** It is pleaded that, after the death of Mallappa, plaintiff being the absolute owner is in possession and enjoyment of the suit schedule property, it has been subsequently acquired by the defendant No.4 – KIADB, it had issued a notification U/Sec.28(1) of KIADB Act, dated 02.12.2020, but notice was wrongly issued to defendants No.10 to 13, who are not the owners in possession of the property. That subsequently defendant No.4 – KIADB has issued notice to defendants No.1 and 3 on the basis of illegal revenue entry and defendant No.4 is trying to disburse the entire compensation in favour of defendants No.1 and 3. Hence, the above suit for declaration.

**14.** Now, the plaintiff claims to be daughter of Mallappa, which is denied by defendants of present case and deny the title of suit schedule property of plaintiff. **The defendants No.1 and 3 have filed the written statement and have adopted the written statement contentions as part and parcel of the objections to the present IA.**

The defendants No.1 and 3 have contended that, the plaintiff is not the daughter of late Mallappa. The plaintiff has not produced any document in proof of the same, but has

produced only affidavit form of genealogical tree annexed to the plaint. In the said annexed affidavit genealogical tree, the plaintiff has shown herself as the foster daughter of late Mallappa and his wife, subsequently the word foster, which has written as 'ಸಾಕು ತಂದೆ' 'ಸಾಕು ತಾಯಿ', wherein, the words of 'ಸಾಕು' i.e., foster has been scratched out and counter signed. Hence contends that, plaintiff is not the daughter of the late Mallappa. That Muniswamy @ Kenchappa had sold the property by virtue of registered sale deed, dated 20.02.2004 bearing Sy.No.119/P2, new Sy.No.255/2, measuring to an extent of 3 acres 27 guntas to Anjinappa, who is the father of defendant No.1, katha was effected in the name of Anjinappa.

**15.** The said correction reveals that, there is no clarity in the plaintiff regarding status of paternity. That the defendant No.1 has come to know regarding the dispute between the Yalagamma and the said vendor- K. Muniswamy, in OS No.158/1998 before the Sr. Civil Judge Court, at Kolar, wherein, it was dismissed. Hence, the opponents had filed mis-petition and the suit was restored, after trial it was dismissed and declared that, Yalagamma was the legally wedded wife of Mallappa, wherein, **K. Muniswamy**, brother of Mallappa had failed to prove his title over the suit schedule property. Further had held that, Yalagamma and Mallappa had 2 daughters by name- Gowramma and Lakshamma. After contest, the suit OS

No.158/1998 was dismissed on 02.01.2006 with respect to suit schedule property.

**16.** That the said **Muniswamy @ Kenchappa** (brother of Mallappa) had filed regular appeal in RA No.11/2006, to set-aside the judgment and decree of OS No.158/1998 before the District & Sessions Judge Court, at Kolar. After contest, above RA., was dismissed through judgment and decree, dated 26.12.2006, hence above suit had attained finality.

**17.** The defendants' advocate has argued that and has produced relevant documents that, the vendor- **Muniswamy @ Kenchappa** had not disclosed the pendency and disposal of the above suit. At the time of executing sale deed, the defendants of the said suit had tried to interfere with the possession of the defendants No.1 and 3, hence defendant and plaintiff in the said suit, Gowramma along with her children had come forward, compromised the matter and had executed registered consenting deed in favour of defendants No.1 and 3 by virtue of registered consenting sale deeds, dated 25.01.2012 and 15.12.2014. Subsequently, Lakshamma, the daughter of Mallappa had also executed a registered consenting deed, dated 16.08.2011. Hence, title of the defendant No.1's father was confirmed by the above said consenting deed. Hence, the defendant No.1 is in continued possession and enjoyment of old Sy.No.119/P2 and new Sy.No.255/2 to an extent of 3 acres 27 guntas of land. That the

defendant No.3 is in possession of suit schedule property to the extent of 3 acres in old Sy.No.255 and new Sy.No.255/1.

**18.** The defendants have contended that, the suit is barred by law, as there is no cause of action, as the plaintiff does not has any right over the suit schedule property, at any point of time. As the defendants No.1 and 3 are in possession of the suit schedule property. That the plaintiff has filed the suit to extract the money from the defendants. The plaintiff and her family members knowing the facts, have filed one or other suit against the defendants. The plaintiff has not approached the court with clean hands.

**19.** The defendants No.1 and 3 contends that, the daughters of Mallappa have initiated proceedings and have won the case against the plaintiff's father-in-law and have been declared as daughters of late Mallappa, hence the question of plaintiff claiming that, she is the foster daughter of late Mallappa does not arise. That the genealogical tree of the Mallappa's family has been produced before the Kolar court in OS No.158/1998, which is marked as Ex.D12, wherein, in the said judgment at page No.3, at 4<sup>th</sup> line, wherein, the said Yalagamma in her written statement having pleaded that, Mallappa had expired on 26.09.1998 at Bhuvanahalli Village, having 2 issues namely-Gowramma and Lakshamma. The plaintiff has produced copy of OS No.158/1998. That page No.115 and 116 of the documents

also reveal the same, hence defendants No.1 and 3 contends that, plaintiff is not the daughter of late Mallappa.

**20.** It is the case of the plaintiff that, she is claiming to be the daughter of late Mallappa, in her plaint has got pleaded that, Mallappa was granted the suit schedule property on 28.05.1982, but subsequently correction is made as '**father in blue ink in plaint before the word Mallappa**', in plaint, which does not has any counter signature as to on which date, the said correction is made, which creates doubt.

**21.** The plaintiff in the present case has also produced affidavit form of genealogical tree, which reveals that, plaintiff has sworn to an affidavit, earlier it has been typed as Mallappa as 'ಸಾಕು ತಂದೆ' and Yalagamma as 'ಸಾಕು ತಾಯಿ' at SI.No.1 and 2 and the present plaintiff is shown as "ಅರ್ಜಿದಾರರು" and not shown as the status as biological daughter, nor adopted daughter. The above said affidavit has a recital that, above affidavit is sworn in order to get facility from the government, as the family members, but it does not reveal – Saraswathamma, the plaintiff neither as biological daughter, nor as adopted daughter and foster daughter.

**22.** The plaintiff at the time of filing itself has no clarity about her paternity, who claims property granted to Mallappa to be declared as the property belonging to the plaintiff-

Saraswathamma, claiming that, she is the daughter of said Mallappa. The signature of the plaintiff reveals that, she is a illiterate has put her signature in kannada, which can be read as an uneducated person, who has learnt only to put her signature, but though uneducated it does not mean that, villagers will not have any knowledge, leave apart the worldly knowledge, but should have knowledge of paternity, which is very vital to a persons life.

**23.** The plaintiff has not produced any other documents, apart from the above affidavit form of genealogical tree claiming to be the daughter of Mallappa and another document of school admission, there are no other documents produced by the plaintiff to the effect that, she is the daughter of late Mallappa, but has come up with the above IA., seeking for the amendment as sought in the above **IA. No.5**, that, plaintiff's mother was Yalagamma, Yalagamma's 1<sup>st</sup> husband Muniswamappa. That the said Yalagamma through 1<sup>st</sup> husband had begotten two daughters namely- Gowramma and Lakshmamma. Subsequently, Yalagamma having left 1<sup>st</sup> husband- Muniswamappa and got married to one Mallappa, as the 2<sup>nd</sup> husband and claims that, the plaintiff as the daughter born to the said Yalagamma and Mallappa.

**24.** That the plaintiff's grandfather- Kempaiah had 4 sons namely- Munivenkatappa, Kenchappa @ Muniswamy,

Munishamappa and Mallappa. That the said Mallappa was granted the suit schedule property in LRF No.1137/74-75, dated 28.05.1982, he was in peaceful possession and enjoyment of the schedule property. That the plaintiff is only the legal heir to the Mallappa.

**25.** That after the death of Mallappa, his own brother-Kenchappa @ Muniswamy without disclosing the true facts had created the revenue documents and sold 3 acres 27 guntas to one Anjanappa, the father of defendant No.1. The remaining property of 3 acres was sold to Sandappa, subsequently, the said Sandappa sold to Gangaram Singh, in turn, he had sold to defendant No.3- R. Vijayalakshmi, wherein, the entire suit schedule property is acquired by defendant No.4- Special Land Acquisition Officer, Bangalore.

**26.** That Mallappa's brother has no right to change the katha of the suit schedule property into his name and to executed sale deed in favour of others as stated above. That Mallappa's own brother Muniswamy @ Kenchappa had filed a suit in OS No.158/1998 against plaintiff's mother- Yalagamma, when the case was pending, Yalagamma had expired, hence the said Muniswamy @ Kenchappa had brought Yalagamma's LRs as Gowramma and Lakshamma, instead of plaintiff-Saraswathamma. Though, the said Gowramma and Lakshamma are the daughters of Muniswamappa, but in OS

No.158/1998, the plaintiff Muniswamy @ Kenchappa in his pleadings stated that “the suit property measuring 6 acres 27 guntas in Sy.No.119, originally belongs to his younger brother-Mallappa having expired at the age of 60 on 26.09.1998 and he has expired issue-less.

**27.** Muniswamy @ Kenchappa, has claimed to be the only heir to the said Mallappa and he had got changed the revenue records into his name. That the transactions made by Muniswamy @ Kenchappa is illegal without title and that plaintiff came to know about these facts recently, after collecting all the documents to file the present suit.

**28.** Though, the plaintiff has sought to plead by way of amendment, the above prayer, but has not produced any document to evident that, the plaintiff is the biological daughter, or adopted daughter or as a foster daughter. In the plaint has pleaded, that Mallappa has been granted the suit schedule property. That after the death of Mallappa, the plaintiff is the absolute owner, hence claims to declare herself as absolute owner of the suit schedule property, but after filing of the written statement in the present case by the defendants No.1 and 3 on 06.12.2023 has come up with the above IA., on 29.03.2023 contending that, the plaintiff had instructed her advocate, but the same has not been pleaded, hence seeks to allow the above IA., as she had engaged a new advocate and came to know

about the **non-pleadings** of the above said facts on changing of the advocate. ***An ordinary prudent man or a village rustic will have the commonsense and have the knowledge of their parents and cannot claim that, they do not have the knowledge of their paternity.***

**29.** In the preset case, the defendants have denied that, the plaintiff as the daughter of Mallappa and have produced xerox copy of judgment in OS No.158/1998, wherein, K. Muniswamy @ Kenchappa S/o Kempanna has filed the suit against Yelagamma, dead represented by her legal heirs ie., Lakshamma D/o Muniswamy and Guramma W/o Venkataramappa, wherein, in the said suit **issue No.5** has raised that ***“Whether defendant proves that, she is the legally wedded wife of deceased Mallappa”*** and has answered in the **Affirmative**. In the Judgment at para-15, wherein, the plaintiff- K. Muniswamy @ Kenchappa S/o Kempanna, being the brother of deceased Mallappa has failed to prove that, the said deceased Mallappa had no issues, having died issue-less, wherein, the said Muniswamy @ Kenchappa had sought for declaration of title and permanent injunction with respect to Sy.No.119, measuring 6 acres 27 guntas of Bhuvanahalli Villae, Kasaba Hobli, Malur Taluk. It is also discussed in the judgment that, the said plaintiff- K. Muniswamy @ Kenchappa has failed to prove his title, possession and alleged interference as contended by him in

OS No.158/1998. It is also observed in the said judgment that, deceased Yalagamma's daughter- Gowramma and Lakshamma as the legal heir has to prove that, Yalagamma as the legally wedded wife of Mallappa, having been proved and held that, Yalagamma as the legally wedded wife of Mallappa and that the said Yalagamma had daughter namely- Gowramma and Lakshamma through Mallappa.

**30.** Against the said judgment in RA No.11/2006 has been preferred by the said plaintiff- K. Muniswamy @ Kenchappa, wherein, in the RA, family tree of Yalagamma's daughter based on Ex.D11 and D12 produced in OS No.158/1998 has been discussed, wherein, it has observed in the judgment before the trial court, the plaintiff having failed to prove that, deceased Mallappa was the brother of K. Muniswamy @ Kenchappa having died issue-less and that Yalagamma has the wife of Mallappa. Ex.D12 family tree, wherein, Yalagamma has obtained the family tree before the Village accountant and has given the information to the family tree claiming that, Mallappa and Yalagamma having begotten daughters- Gowramma and Lakshamma, the said information has been given by the Yalagamma herself. The Yalagamma herself has given the said information, if the plaintiff who claims to be the daughter of Yalagamma, if plaintiff was the daughter of Yalagamma, the said Yalagamma should have given the information about her family that, Saraswathamma as the daughter of Mallappa and Yalagamma, which is not revealed in

the Ex.D12, which has been observed in the judgment in RA. In the judgment of RA., it has also discussed regarding the Ex.D11 an order passed by the Revenue Sheristhedar, Malur Taluk, on 06.01.2003, wherein, it has a mention that, Yalagamma's husband name is revealed as **Mallappa**, resident of **Bhavanahalli** Village as per Ex.D11, wherein, in RA, judgment of trial court has been up-held and the appeal has been dismissed.

**31.** The plaintiff in the present case claims that, she is the daughter of Mallappa has produced xerox copy of admission extract of Govt. Higher Primary School, Bhavanahalli, Malur taluk, having admission No.4/1976 revealing the name of Saraswathamma i.e., plaintiff and her date of birth – 20.05.1971, but there is a over writing with respect to **month** and **year** of date of birth, there is a correction made with respect to year of admission, which also reveals that, father's name as – Mallappa. The plaintiff has not produced any original document of the school admission extract, who claims to be the daughter of Mallappa by way of **amended pleadings**.

**32.** The present court at the time of disposing IA No.4 U/o 39 Rule 1 & 2 r/w Sec.151 of CPC., it also observed about the said fact and expressed doubt about the genuinity of the said admission certificate, wherein, admission date is revealed as **23.05.1977**, but there is a correction made in the portion of the

year of admission and also plaintiff having failed to produce original document of admission to prove that, she is the daughter born to Mallappa.

**33.** The defendants No.1 & 3's advocate contend that, the plaintiff's father-in-law by name- K. Muniswamy @ Kenchappa along with his children- Jayaram, minor son- Srinath, M.K. Nagendra, Vijaya Kumar, Naveen Kumar, M. Muniswamy, Kemparaj, M.K. Raveendra, M.K. Ramchandra, M. Manjunatha have sold the suit schedule property No.1 i.e., Sy.No.119/p2 to the Anjinappa ie., father of the defendant No.1 as per registered sale deed, dated 20.02.2004. In the said sale deed recital has been stating that, OS No.158/1998 has been decreed and sale has been made. Though, OS No.158/1998 has been dismissed filed by K. Muniswamy @ Kenchappa S/o Kempanna, who is the vendor of suit schedule property No.1. Though, the title with respect to suit schedule property No.1 has been held in the negative in the said OS No.158/1998 and also in the RA No.11/2006, the said Muniswamy @ Kenchappa has sold the property to defendant No.1's father, subsequently, the defendant No.1's father has obtained consenting sale deeds from the Yelagamma's daughter Gowramma and her children in favour of defendant No.1, it is also included defendant No.1's father having got executed consenting sale deed, dated 21.01.2012.

**34.** Subsequently, another daughter of Yelagamma namely- Lakshamma had also executed consenting sale deed, dated 16.08.2011 to defendant No.1 with respect to suit schedule property No.1 by reciting about the dismissal of right of K. Muniswamy @ Kenchappa in OS No.158/1998 and RA No.11/2006 has been recited. Both consenting deeds had recital about the denial of declaratory relief sought by the vendor- K. Muniswamy @ Kenchappa has been dismissed is recited. Though, the said K. Muniswamy @ Kenchappa had no right, had alienated suit schedule property No.1 to defendant No.1's father, subsequently, based on the judgment of OS & RA, defendant No.1's father and the defendant had obtained consenting deed with respect to suit schedule property from Yelagamma's daughters through Mallappa, in order to perfect their title with respect to suit schedule property.

**35.** The defendants No.1 & 3's advocate has produced registered sale deed, dated 04.07.2008 executed by M. Munishami @ Kenchappa in favour of Sandappa, the said Sandappa is the vendor of defendant No.3 with respect to suit item No.2. The said K. Muniswamy @ Kenchappa, though had no rights with respect to suit schedule property No.2 has executed sale deed.

**36.** The defendants No.1 & 3's advocate have produced copy of judgment in OS No.75/2001, wherein, plaintiff's uncle

had filed a suit against his own father – namely Kenchappa @ K. Muniswamy S/o Kempanna and defendant No.3's father- Sandappa, who is made as defendant No.9 in OS No.75/2001, wherein, Kenchappa's son had filed a suit seeking for partition in Sy.No.255/1, but the said suit with respect to suit item No.9 in OS No.75/2001, new Sy.No.255/1 and old Sy.No.119/p2, measuring 3 acres, situated at Bhavanahalli Village, in the said suit, Kenchappa @ K. Muniswamy's son- Nagendra has been given 1/8<sup>th</sup> share with respect to other properties and declared that, the Kenchappa @ K. Muniswamy's son i.e., plaintiff- Nagendra's right in suit item No.9 has been negated and held not having a share in new Sy.No.255/1, old Sy.No.119/p2.

**37.** Based on OS No.158/1998, though K. Muniswamy @ Kenchappa S/o Kempanna's right with respect to suit schedule property, has been dismissed, which has been appealed in RA No.11/2006, wherein, it has also upheld the trial court judgment and denied the right of K. Muniswamy @ Kenchappa with respect to suit schedule property No.2, but then also the said K. Muniswamy @ Kenchappa has sold suit schedule property No.2 to defendant No.3's vendor- Sandappa, by virtue of registered sale deed, dated 04.07.2008.

**38.** The defendants No.1 & 3's advocate has produced absolute sale deed made by Sandappa i.e., defendant No.3's vendor and daughter of Mallappa i.e., Gowramma, subsequently

had sold suit schedule property No.2 to M.G. Gangaram Singh by virtue of absolute sale deed, dated 15.12.2014 by reciting regarding OS No.158/1998 and RA No.11/2006, wherein, title of K. Muniswamy @ Kenchappa has been denied and declared in trial court and appeal court. Hence, Smt. Gowramma being the daughter of Mallappa, in order to perfect the sale made by defendant No.3's vendor to M.K. Gangaram Singh i.e., defendant No.2 has got executed a sale deed, to the said sale deed, Lakshamma another daughter of Mallappa has also signed as consenting witnesses. Subsequently, the said Gangaram Singh i.e., defendant No.2 and his family members have sold the suit schedule property No.2 to defendant No.3– Smt. R. Vijayalakshmi with respect to suit schedule property No.2.

**39.** In the present case, subsequent purchasers contends that, they have got perfected their title with respect to suit schedule properties No.1 and 2, the defendants No.1 to 3 by getting executed necessary consenting sale deeds by the daughters of Mallappa namely- Lakshamma and Gowramma. In view of the judgments in OS No.158/1998 and RA No.11/2006 and have perfected their title and are entitled for their right and title with respect to suit schedule properties No.1 and 2 contending that, the plaintiff is not the daughter of alleged Mallappa and Yelamma.

**40.** The defendants No.1 & 3's advocate has produced **family tree produced by the mother of Yelagamma before the trial court in OS No.158/1998** showing the family tree, which is marked at Ex.D12 of original suit contending that, Yelagamma who claimed to be the wife of Mallappa having given information regarding the family tree of Yelagamma and Mallappa before the trial court contending that, the said Yelagamma through Mallappa had begotten Gowramma and Lakshamma, as her daughters and the said Yelagamma **had not shown the name of the present plaintiff- Saraswathamma as the daughter**. That this document also throws light on the fact that, if the said Yelagamma in reality if she had a biological daughter through Mallappa would have during her lifetime in the family tree would have shown the present Saraswathamma (plaintiff) as the daughter, in her family tree and would fight for the rights of Saraswathamma in OS No.158/1998, but it is not done before the trial court, Yelagamma through Mallappa has claimed her daughters as Gowramma and Lakshamma, as her daughters and not the present plaintiff, which has been discussed by way of merits before the trial court in OS No.158/1998, which has been appealed and confirmed in RA No.11/2006.

**41.** Now, the plaintiff claims that, she is the daughter of deceased Mallappa, but no documents are produced to that effect before the present court, wherein, plaintiff's advocate

contends that, plaintiff is the Yelagamma's 2<sup>nd</sup> husband's daughter, the plaintiff had every opportunity to evident her paternity by producing any original document, as the above matter was also discussed, while passing speaking order on IA No.5 on 10.04.2023, but it is not done. The defendants No.1 and 3 has produced plaint of OS No.623/2022, wherein, present plaintiff is 8<sup>th</sup> defendant is pleaded to be daughter of defendant No.7 of the said suit Lakshmamma, though it is just a pleading, but plaintiff and defendant neither have produced judgment copy of the same to elicit the pleading as stated above to know has been concluded.

**42.** In the present case, issue of the relationship of Yelagamma and her daughter is already decided by way of judgment on merits.

**43.** The plaintiff herself is not clear in her pleading that, her affidavit genealogical tree, as earlier has deposed before getting it notarized, as foster daughter of Mallappa and Yelagamma subsequently has striked out and now has come up with a subsequent pleading amendment of pleadings by filing an IA No.4 claiming that, plaintiff as the Yelagamma's 2<sup>nd</sup> husband's daughter, but at this juncture, there are no documents produced as claimed by the plaintiff. Though plaintiff seeks to allow above IA., as the stage of suit is initial stage, wherein, the issues are not yet framed, but court requires reasons to allow the

above IA., by mere claiming that earlier advocate did not plead, came to know through subsequent advocate who was engaged, subsequently, which is an after thought of filing written statement, there are no supporting document to the effect pleading as sought by plaintiff. In view of the above discussions and findings, I proceed to pass the following;

**ORDER**

**IA No.5** filed by the plaintiff **U/o 6 Rule**

**17 r/w Sec.151 of CPC.,** is hereby

***dismissed,*** with cost of Rs.**500/-**.

*(Dictated to the Stenographer, transcribed by him, transcript corrected by me and then pronounced in the open court on this **10<sup>th</sup> day of April, 2023**)*

**(LATHADEVI G.A.)**

Senior Civil Judge & JMFC.,  
Malur.