

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC., AT  
MULBAGAL.**

Dated this the 7<sup>th</sup> day of August 2013.

Present: **Sri. RAJU. N.B.A.L.L.B.,**  
Addl. Civil Judge & JMFC.,  
Mulbagal.  
(Name of Presiding Officer)

**FDP. No.10/2011**

Petitioner/s : Radhamma and others  
V/s

Respondent/s : Gangappa and others

**Parties to I.A.**

Applicant/s : Narayanamma  
(Rep.by Sri. M.V.H. Adv.)

**V/s**

Opponent/s: Gangappa and others  
(Rep. by Sri. AMR/APR. Adv. )

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**ORDERS ON I.A.No.6**

The plaintiff/applicant has filed the above said I.A.No.06 Under Order 6 Rule 17 r/w Sec.151 of CPC seeking ===== to amend the plaint in the relief column to the following extent;

1. To insert the sentences “ On the other hand, after the defendant No.10 has filed the written statement and has stated about the alleged sale deeds said to be executed by the plaintiff and his family members and furnished the copies of the deeds to this court then only the plaintiff

came to know about the alleged sale deeds for the reason that, no where in the revenue records, there is a single recital about the alleged sale deeds, in spite of several mutation proceedings took place on several times. As such, as neither the plaintiff and his father nor his other family members executed the alleged sale deeds and the said alleged sale deeds bearing Sy.No.109/65-66 dated 12.4.1965, Sy.No.435/1975-76, dated 3.5.1975, Sy.No.953/1970-71 dated 5.6.1970 and Sy.No.3843/1970-71 dated 17.7.1971 are concocted and seems to be gotiti by fraud under spurious circumstances. More over if really these alleged sale deds are genuine, definitely these documents would have acted upon the revenue documents and would have been effected in accordance with them and law as such they are void and illegal and the supra sale deeds are not binding upon the plaintiff and his family members”. in the 18<sup>th</sup> line of para No.6 and page No.10 of plaint, after the sentence source of title and full stop, as fresh sentence.

2. To insert the words “ and also after the written statement and documents filed on the file of this court”, in 14<sup>th</sup> line of page No.11 of plaint under cause of action column.

2. It is stated in the affidavit annexed to the said I.A.No.24 that the the suit schedule property is the ancestral property wherein the defendant No.1 and 2 are in permission possession. Whereas unfortunately as they turned hostile towards himself and manipulated the revenue documents in their favour and denied to deliver the possession of the suit schedule property. The written statement filed by the 10<sup>th</sup> defendant except mentioning about some of the alleged sale deeds, dates nothing description has been made. If

the annexed application is allowed and he will be permitted to amend the plaint as sought for no harm will be caused to the defendants.

3. On the other hand the above said I.A.No.24 has been opposed by the defendants side by filing objection statement wherein it is contended that the sale transaction is based on registered document and the statement of the plaintiff that the plaintiff did not know the change of revenue records for over forty years is unbelievable. The plaintiff has no legal right or possession over the suit schedule properties. The suit schedule property are not the joint family properties as claimed by the plaintiff. The plaintiff has admitted in his cross-examination that all of them had been settled in Bangalore during 1970-71. The plaintiff has not produced any material to show that the schedule lands were given on vara basis. The plaintiff has mentioned the different boundaries. After 1970 when the plaintiff's family shifted to Bangalore they never resided in Kadenahalli village. By the proposed amendment the defendant wants to change the cause of action which is not permissible. The plaintiff is seeking the proposed amendment after the trial is over on both the sides and when the case is posed for arguments and the proposed amendment is only an after-thought. The application is liable to be dismissed on the point of delay and laches. Hence sought for the dismissal of the I.A.No.24.

4. Heard both side perused the materials available on record. Now following points that arose with consideration.

1. Whether the applicant proves that there is a sufficient grounds to considered I.A.No.24 for amendment of plaint as sought?
2. What order?
5. My answer to the above point as following reasons assigned below.

### **REASONS**

6. **Point No.1:-** The suit of the plaintiff is one for the relief of permanent injunction against the defendants basically filed in respect of conservancy or Sandhu dhari. The actual contention of the plaintiff in the affidavit annexed to the said I.A.No.12 that during the pendency of the suit the defendants have constructed pillar by encroaching upon item No.2 which is meant for common use of purchaser i.e. the plaintiffs and defendants from their original vendor. Therefore he has filed the present I.A.No.12 for the relief of mandatory relief and for the relief of declaration that the Sandhu Dhari is belonged to both parties.

7. On perusal of the objection submitted by the defendant and as well as the nature of the amendment sought in the suit it is appears that the plaintiff sought the proposed amendment from the changing the bare injunction suit for the larger relief of mandatory as well as declaration. Further the written statement filed by the defendant is on 9.11.2009. So therefore though as per 6 Rule 17 of CPC amendment cannot be allowed to the pleadings after as per the amended CPC after commencement of evidence but in this case on looking into nature of the amendment sought by the plaintiff neither change the cause of action nor takes away any rights of other side. Therefore if the amendment application is rejected it leads to multiplicity of proceedings and one more litigation as observed by the Hon'ble High Court of Karnataka in its decision reported in **ILR 2003 Kar 71 Kumar and others and Kothandapani**. Hence I am of view that the objection raised by the defendants side is not sufficient to reject I.A.No.12. Hence I answered point No.1 in Affirmative.

8. **Point No.2 :** In view of finds on Point No.1 I proceed to pass the following.

**ORDER**

I.A. No. 06 filed by the applicant Under Order 6 Rule 17 r/w  
151of CPC is hereby =====

The plaintiff is permitted to amended his plaints as sought in  
I.A.No.12 within 4 days from the date of this order.

(Dictated to the Stenographer on computer, revised and corrected by me, and then  
pronounced in the open Court on this the 7<sup>TH</sup> DAY OF AUGUST 2013.)

**(RAJU N)**

Addl. Civil Judge & JMFC., Mulbagal.

