

KAMS400004292019



IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT K.R.NAGAR

PRESENT: **Sri. Aravindra.B.C., B.A., L.L.B.,**
Senior Civil Judge & JMFC
K.R. Nagar.

Dated this the 23rd day of August, 2024

O.S. No.14/2019

1. Smt. Jainabee,
W/o Late Ahmed Jaan,
Aged about 84 years.

2. Sri. Abdul Waheed,
S/o Late Ahmed Jaan,
Aged about 66 years.

3. Sri. Wajid,
S/o Late Ahmed Jaan,
Aged about 63 years.

Plaintiff No.1 to 3 are
R/at: Ward No.21,
D.No.21/36, Muslim block,
Kallaiahana Halli,
K.R.Nagar Town-571602.

4. Sri. Khaleel Ahmed,
S/o Late Ahmed Jaan,
Aged about 56 years,
R/at: Door No.21/51,
Khader Saw Mill road,
Muslim Block,
K.R.Nagar Town-571602.

Since dead by LRs.

4(a). Sri. Dilshad Begum,
W/o Late Khaleel Ahmed,
Aged about 50 years.

4(b). Smt. Nishad Banu,
D/o Late Khaleel Ahmed,
Aged about 33 years.

4(c). Sri. Kalifulla,
S/o Late Khaleel Ahmed,
Aged about 30 years.

4(d). Smt. Sadiya Kaisar,
D/o Late Khaleel Ahmed,
Aged about 28 years.

Plaintiff No.4(a to d) are
R/at: Door No.21/51,
Khader Saw Mill road,
Muslim Block,
K.R.Nagar Town-571602.

5. Sri. Nazeer Ahmed,
S/o Late Ahmed Jaan,
Aged about 55 years.

6. Sri. Farooq,
S/o Late Ahmed Jaan,
Aged about 53 years.

Plaintiff No.5 & 6 are
R/at: Muslim Block,
Kallaiahna Halli,
K.R.Nagar Town,
K.R.Nagar-571602.

.....Plaintiffs

(By Sri. A.G.T., Advocate)

-Versus-

1. Smt. Savithramma Shetty,
W/o Late Dooli Satyanarayana Shetty,
Aged about 80 years,
R/at: K.R.Nagar Town,

Mysuru District.

Since dead by LRs.

1(a). Smt. Kanaka @ Babe,

D/o Savithramma Shetty,
Aged about 37 years,
R/at: Basavanagudi,
Bengaluru.

1(b). Smt. Shashikala,

D/o Savithramma Shetty,
Aged about 35 years,
R/at: Shanthinagar,
Bengaluru.

Now both are R/at:
K.R.Nagar Town,
Mysuru District.

2. Sri. Manjunatha Babu,

S/o Late Dooli Satyanarayana Shetty,
Aged about 55 years,
R/at: K.R.Nagar Town,
Mysuru District-571602.

3. Sri. Chennappa Shetty K.N.,

S/o Siddalingappa,
Aged about 45 years,
(Purchaser of Sy.No.46
measuring 1 acre 17 guntas).

4. Sri. K.N.Manjunatha Shetty,

S/o Late Dooli Satyanarayana Shetty,
Aged about 50 years,

5. Smt. K.M.Bharati,

W/o K.N.Manjunatha Shetty,
Aged about 45 years.
Since dead by LRs.

Defendant No.3 to 5 are
R/at: Madhuvanahalli,
K.R.Nagar Town,
Mysuru District-571602.

5(a). Sri. Manjunatha Shetty,

Aged about 60 years.

5(b). Sri. Karthik Shetty,

S/o Manjunatha Shetty,

Aged about 24 years.

Both are R/at: Near Government
KSRTC Bus stand,
Kamakshamma Auto Mobiles,
K.R.Nagar.

6. Sri. R.Rafeeq Ahmed,

S/o Late Shafee Ulla Khan,

Aged about 65 years,

R/at: SKS Farm, Hunsur road,
K.R.Nagar Town, Mysuru District,
(Purchaser through sale deed
dated 02.03.2017).

7. Sri. Manjunatha,

S/o Ssajji Gowda,

Aged about 47 years,

R/at: Devanga Beedi,
Holenarasipura Town,
Hassan District.

8. Sri. Prakash,

S/o Mani,

Aged about 42 years.

9. Sri. Mallikarjuna,

S/o Bar Krishnappa,

Aged about 55 years.

10. Sri. Srinivasa,

S/o Bar Krishnappa,

Aged about 53 years.

11. Sri. Loki,

S/o Bar Krishnappa,

Aged about 50 years.

12. Sri. Mehabood Khan,

Aged major.

Defendant No.8 to 12 are
R/at: K.R.Nagar Town,
Mysuru District.

13. Sri. Devilal Chawat

@ **Bhojaraj Chawat,**
S/o Dharmachand Jain,
Aged about 50 years,
R/at: Madhuvanahalli,
K.R.Nagar Taluk,
Mysuru District.

14. Sri. Srikanth,

Gas agent,
Aged about 48 years,
R/at: K.R.Nagar Town,
Mysuru District.

**15. The Under Secretary of
Revenue Department,**

Vidhana Soudha, Bengaluru.

16. Deputy Commissioner,

Mysuru.

17. Assistant Commissioner,

Hunsur.

18. Tahsildar, K.R.Nagar.

.....**Defendants**

(LRs of D1(a) & (b) absent)
(By Sri. B.K.K. Adv. for D.2, 8, 12 to 14)
(By Sri. J.M.A, Adv. for D.3, 4 & 5(b))
(LRs of D5(a) absent)
(By Sri. K.C.S., Adv. for D.6)
(By Sri. K.K.R., Adv. for D.7)
(D9 to 11 Exparte)
(By Sri. A.G.P., Adv. for D.15 to 17)
(By Sri. K.S.D., Adv. for D.18)

Parties to I.A.No.XXX

Applicant : Sri. Farooq

..... **6th Plaintiff**

-V/s-

Opponents : Smt. Savithramma Shetty
And others

..... Defendants

Provision under which the application is filed	Under Order 6 Rule 17 of of CPC.
Relief Sought For	Seeking the relief of amend the plaint
The date on which the application is filed	10.10.2023
Number of the application	IA No.XXX
The date on which the objection is filed by the different opponents	05.12.2023
The date on which the orders was passed on the said application	23.08.2024

ORDER ON IA.No.XXX

The plaintiff has filed I.A.No.XXX under Order 6 Rule 17 of Code of Civil Procedure and seeking permission to amend the plaint by deleting the some words in para No.3 to 5, 7, 8, 10 to 13, 15 and 16 and also delete the prayer column word dated 07.03.1976 and also include the para (e), (ee) and also (f) (g) and (h) Sy.No.46/1 measuring 3 acres. In the schedule after line

No.4 out of two items only 46/1 measuring 3 acres 6 guntas plaintiffs are the absolute owners.

2. In the affidavit, which enclosed to I.A.No.XXX, wherein he has stated that after filing of written statement some of the defendants purchased the property bearing Sy.No.46/2 as per sale deed dated 02.03.1976. At that time, the approach of the purchasers, now being considered the present plaintiffs leave away such right to have cordial survivor plaintiffs are conceding the delete the Sy.No.46/2. Therefore, the proposed amendment is very necessary and if the proposed amendment is allowed, no harm will be caused to the other side. If the application is not allowed, the plaintiffs will be put to great loss and injury. Accordingly, prays for allow the application.

3. On the other hand, the defendants have filed objection to the application.

4. Heard the learned counsel appearing for the parties and perused the material on record.

5. Now the following points arise for consideration of this Court:

1. Whether the plaintiff No.6 has made out ground that, the proposed amendment to be necessary for the purpose of determining the real question in controversy between the parties?

2. To what order?

6. The findings of this Court on the above said point are as under:

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 against the defendants for the relief of declaration and permanent injunction. On the other hand, the defendants have denied the case of the plaintiffs.

8. It is noticed from the records is that, the trial was not yet commenced. The plaintiff come up with the present application and seeking permission to amend the plaint as prayed for in the accompanying application.

9. Now the question arise before this court is, whether the amendment is necessary for the determination of the real question in controversy between the parties. Before discussion of the above point, this court glance the provision under Order 6 Rule 17 of Code of Civil Procedure. Hence, it is relevant to mention under **Order 6 Rule 17 of Code of Civil Procedure;**

Rule 17 provides for amendment of pleading it reads under;

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. The said provision makes it clear that, at any stage of the pleadings allow the either party to alter or amend his pleadings. If the proposed amendment be necessary for the purpose of determining the real question in controversy between the parties.

11. In the instant case, the plaintiffs filed the suit for declaration and injunction. On the other, hand the defendants denied the claim of the plaintiffs.

12. The plaintiffs cannot withdrawn any admissions. It is settled law that the grant of application for amendment shall be subject to certain conditions namely, 1) when the nature of it is changed by permitting amendment 2) when the amendment would result in introducing new cause of action and intends to prejudice

the other party and when allowing amendment applications defeats the law of limitation. The proposed amendment does not change the nature of the suit or cause of action and there is no defeats of the limitation in the amendment application.

13. If proposed amendment is allowed, the defendants have got right to make file additional written statement and to adduce evidence to disprove the case of the plaintiffs. To avoid the multiplicity of proceedings the proposed amendment is allowed. **Hence, this court answered Point No.1 is in the Affirmative.**

14. **Point No.2**:- For the above discussion on point No.1, this court proceed to pass the following:

ORDER

I.A.No.XXX filed by the plaintiff No.6 under Order 6 Rule 17 of CPC is hereby ***allowed.***

The plaintiff is permitted to amend the plaint and furnish the

amendment plaint within 14 days from the date of this order.

*[Dictated to the Stenographer directly on computer, typed by her corrected and then pronounced by me in the Open Court on the **23rd day of August, 2024**]*

**(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC,
K.R.NAGAR.**