

**25/04/2025.**

**Pls: Shri.LVR Adv.**

**Def:Shri.PD Adv.**

**ORDERS ON IA NO.10 FILED BY THE PLAINTIFFS U/O 6 RULE**

**17 R/W SECTION 151 OF CPC**

**1.** The plaintiffs have filed the present suit for the relief of declaration of title and for perpetual injunction as against the defendants.

**2.** When the case was at the stage of cross-examination of Dw.1, the plaintiffs have filed the instant application praying this court to allow them to carry out the amendment in the plaint so as to add certain pleadings regarding the alleged release deed dated 04/02/1980 which is allegedly executed by the subsequently impleaded defendant No.3 in favour of husband of defendant No.1 and also to seek additional relief of declaration in respect of the said release deed dated 04/02/1980 in the plaint.

**3.** In the affidavit annexed to the application it is averred that the defendant No.2 has produced the alleged release deed dated 04/02/1980 only on 26/07/2024. It is averred that until the production of the said release deed by the defendant No.2 on 26/07/2024, the plaintiffs were not aware of the said release deed. It is averred that the subsequently impleaded defendant No.3 namely Smt.Nagamma was never called as Thimmamma. It is averred that in all her personal identity cards and in her public

**O.S.No.354/2019**

documents, the name of the subsequently impleaded defendant No.3 has shown as Nagamma and not Thimmamma. It is averred that even in the relinquishment deed dated 19/03/2016 also no reference is given regarding the alleged release deed dated 04/02/1980. It is averred that it is only on 26/07/2024, when the defendant No.2/Dw.1 has produced the release deed dated 04/02/1980, the plaintiffs came to know about the said document. Hence, now the plaintiffs are intending to challenge the said release deed dated 04/02/1980 by seeking the relief of declaration. It is averred that the relief of declaration in respect of aforesaid release deed dated 04/02/1980 is sought by the plaintiffs within 3 years from the date of their knowledge. Therefore, it is averred that, the proposed amendment is well within the period of limitation. It is averred that the proposed amendment is very much necessary to resolve the real dispute involved between the parties. The proposed amendment will not take away the defence of the defendants. If the application is allowed no hardship will be caused to the defendants and the proposed amendment will also not change the nature of the suit. If the proposed amendment is not allowed, then it will lead to the multiplicity of proceedings. Hence on these grounds the plaintiffs have prayed to allow the application.

**4.** The application was resisted by the defendant No.2 by filing the objection by contending that the application filed by the plaintiffs is not maintainable under the law. The reasons assigned in the accompanying affidavit is not just and proper. The plaintiffs are not diligent in prosecuting the above case. The proposed

amendment sought by the plaintiffs in the instant application is not proper. It is contended that by way of proposed amendment the plaintiffs are seeking declaration in respect of the release deed dated 04/02/1980, which is a 44 years old document. Hence, the defendant No.2 has contended that the proposed amendment is barred by law of limitation. The proposed amendment is ambiguous and contrary to the earlier pleadings made by the plaintiffs. The defendant No.2 has further contended that the plaintiffs have filed the instant application to drag on the case. The defendant No.2 has stated that if the proposed amendment is allowed then the nature of the suit will be changed and the proposed amendment will take away their defence. With these objections the defendant No.2 has sought for dismissal of the application.

**5.** Heard arguments from both the side.

**6.** Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

**Point No.1:** Whether the plaintiffs have made out valid grounds to allow the application?

**Point No.2:** What order?

**7. My answers to the above points are as hereunder:**

**Point No.1:** In the Affirmative.

**Point No.2:** As per the final orders  
for the following:

**REASONS**

**8. POINT No.1:** Plaintiffs have filed the present suit for the relief of declaration of title and for perpetual injunction as against the defendants. By way of amendment the plaintiffs are seeking the permission of this court to carry out the amendment in the plaint so as to add certain pleadings regarding the alleged release deed dated 04/02/1980 and also to seek additional relief of declaration in respect of the said release deed dated 04/02/1980 in the plaint.

**9.** Initially the plaintiffs had maintained this suit only as against the defendants No.1 and 2. Subsequently, upon coming to know about the alleged release deed dated 04/02/1980, the plaintiffs have subsequently impleaded the defendant No.3, who happens to have executed the alleged release deed dated 04/02/1980 in favour of the husband of the defendant No.1. According to the plaintiffs, it is only on 26/07/2024, when the defendant No.2 produced the alleged release deed dated 04/02/1980, they came to know about the said document for the first time. Hence, it is the case of the plaintiffs that their claim for declaration in respect of alleged release deed dated 04/02/1980 is within the period of 3 years from the date of the knowledge regarding the same.

**10.** On the other hand, the defendant No.2 has seriously objected the application by contending that the relief of declaration sought by the plaintiffs in respect of the release deed dated 04/02/1980 is barred by law of limitation because

the said document is 44 years old document. This court is not inclined to deny the plaintiffs to amend their pleadings only on the grounds of limitation for the reasons that the question of limitation is mixed question of law and facts. Whether the relief of declaration sought by way of amendment in respect of alleged release deed dated 04/02/1980 is within the period of limitation or not, the same can only be ascertained by holding full dressed trial and not otherwise. Moreover, the court cannot go into the question of limitation while deciding the application for amendment. At this juncture I feel apposite to rely on the judgement of **Hon'ble Apex Court reported in (2018) 2 SCC page 132 in case of Mohinder Kumar Mehra Vs. Roop Rani Mehra and others wherein at para No.27 it is held as follows:**

*27. Final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether the plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within 12 years, were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment it was too early to come to a conclusion that limitation was only 3 years and not twelve years as claimed by the plaintiff.*

**11. In a decision of Hon'ble High court of Karnataka in WP.No.40998/2017(GM-CPC) in the case of Smt. Venkubai**

**since dead, represented by her LR's Vs. Shri. P Subramanyam,**

it is held as follows:

*7. The trial court erred in rejecting the amendment application holding that the relief sought by the plaintiffs is hopelessly barred by limitation. The question of limitation is a question of law and facts which requires evidence. Therefore, in view of the averments made in the application for amendment and objections by the defendants, it is a matter for trial. The purpose of allowing amendment is to minimise the litigation and to avoid multiplicity of the proceedings.*

**12. In a judgment reported in (2001) 2 SCC 472 in the case of Ragu Thilak D. John Vs. S. Rayappan & others, the Hon'ble Apex Court at para No.5 & 6 has held as follows:**

*5. The purpose and object of order 6 rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to*

*avoid uncalled-for multiplicity of litigation.*

*6. If aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominate purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporate by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for.*

**13.** Hence, from the above ratios laid down by the Hon'ble Apex Court and Hon'ble High Court in the above dictums, it is clear like a cloudless sky that the amendment applications has to be considered in a liberal approach and the question of limitation being mixed question of law and facts, the same can be decided only after full fledged trial and not at the time of considering the prayer for amendment of pleadings. Therefore, the arguments canvassed by learned counsel for defendant No.2 does not hold any water in the eye of law. If the amendment application is allowed, no prejudice would caused to the defendants as they will get an opportunity to file their additional written statement and also they will get an opportunity to cross examine the plaintiff on the proposed amendment. This court being the trial court, full opportunity has to be given to the plaintiffs to properly present their cause. The proposed amendment will not change the nature

of the suit. Hence, keeping in mind the principles laid down by the Hon'ble Apex Court and Hon'ble High Court in the above dictums, I am of the considered opinion that the application filed by the plaintiff deserved to be allowed. However, it is made clear that the amendment would come in to effect from the date filing of the application for amendment. Hence, in view of the above there is no impediment to allow the instant application. Therefore, in order to avoid multiplicity of proceedings and also in order meet the ends of justice, the present application deserves to be allowed.

**Accordingly point No.1 is answered in the Affirmative.**

**14. POINT NO.2:** In view of my foregoing findings and discussions on Point No. I, I proceed to pass the following:

**ORDER**

IA No.10 filed by the plaintiffs U/o 6 rule 17 R/w Section 151 of CPC is hereby allowed on cost of Rs.500/-.

Plaintiffs are permitted to carry out the necessary amendment in the plaint as sought for in the I.A.No.10.

To carry out the amendment **as per this order as well as as per the order dated 26/11/2024** and to furnish the amended plaint.

Call on: 30/06/2025.

**ACJ & JMFC., K.R.NAGARA**