

KAMS510029972010



IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC.,
AT NANJANAGUDU

Present : **Sri. Kishor Kumar M. B.A. LL.B.,**
I Addl. Civil Judge & JMFC.,
Nanjanagud

Dated this the **11th day of January 2024**

O.S./242/2010

Plaintiff : **Smt.Puttananjamma**
D/o. Late.Patel Marigowda,
Aged about 56 years,
R/at.Chamalapurada Hundi,
Nanjangud.

(By Sri. **K.S.K.**, Advocate)

V/s

Defendants: **Sri.Puttaswamy**
S/o.Late.Patel Marigowda,
Aged about 57 years,
R/at.Chamalapurada Hundi,
Nanjangud & others

(Defendant No.1: By Sri. **S.H.**, Advocate)
(Defendant No.2 to 4: By Sri. **S.R.**, Advocate)
(Defendant No.10: By Sri.**S.M.J.**, Advocate)
(Defendant No.7 to 9: Placed exparte)

I.A.No.X/2021

Applicant: Sri. Shivanna
.....**Defendant No.4**
Vs.

Opponents: Smt.Puttananaajamma
.....**Plaintiff**

Orders on I.A.No.X

The applicant/defendant No.4 has filed I.A.No.X u/Order VI Rule 17 of CPC seeking permission to amend the written statement as prayed for in the application.

2. In support of the application, the applicant/defendant No.4 has sworn to an affidavit and stated that, at the time of filing his written statement, certain facts could not pleaded, which are very relevant to decide the case. Defendant No.4 intends to insert para 10(a) to 10(e) to the written statement, the said paragraphs read as follows:

10 (a) That the defendant No.2 Maramma, has executed a Registered Relinquish Deed, dated: 03.03.2006, in favour of his daughter Defendant No.3, by relinquishing all her right over the suit schedule item.no.2 i.e. sy.no.212/2, along with other properties, belongs to her and put her in possession of those properties. Hence, the katha of the same

was changed into her favour.

10 (b) Later, defendant No.3, has executed a Registered Gift Deed, dated; 18.06.2010, in favour of her husband i.e. defendant No.4 - Shivanna, Gifting away the suit schedule item.no.2 and put him in possession and enjoyment of the same. The katha of the same has been changed to the name of defendant No.4. Since then he was in possession and enjoyment of the same.

10(c) Later, the defendant No.4 has executed a Registered Gift Deed, dated; 20.09.2011, in favour of his daughters - D.S.Nisarga and D.S.Sahana who were minors represented by their Guardian - Grandfather -Nanjegowda and put him in possession of the same and katha was also changed to their names. Now, they are in possession and enjoyment of the suit schedule item.no.2.

10(d) That, above said D.S.Nisarga and D.S.Sahana, are not made as party to this suit. Hence, this suit liable to be dismissed for non-joinder of necessary parties.

10(e) That other than suit schedule properties, there are several other landed properties, which were sold to different persons, which belongs to the family of Patel Marigowda, are not included in this case. Hence, the suit is not maintainable.

Defendant No.4 in his affidavit further stated that, the proposed amendment would not give any surprise to the plaintiff. On the other hand, if the application is not allowed, they will be prejudiced and much hardship would cause to them. Accordingly, defendant No.4 prays for allow the application.

3. Per contra, learned counsel for plaintiff has filed objections to I.A. No.X contending that, the application is not maintainable either in law or on facts. The defendants despite having knowledge about the documents, they have not produced the documents before the court since 13 years. The present application is filed in order to harass the plaintiff. After institution of the suit, the defendants have concocted the documents. Initially, the suit was dismissed. In R.A.31/2018, the matter was remanded back to the court on the ground that, the necessary parties were not made as parties in the suit. The defendants despite having knowledge of gift deed executed by defendant No.4 in favour of his minor daughters, did not intimate the same to the court from last 13 years. The defendants in support of their application have not produced

documents to show that, the father of the plaintiff has sold several properties. Accordingly, the plaintiff prays for dismissal of the instant I.A.

4. Heard and perused.

5. The point that arises for my consideration is as follows:-

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

6. My answer to the aforesaid point is in '**Affirmative**' for the following:-

:- R E A S O N S :-

7. Point No. 1:-The plaintiff has filed this suit against the defendants for the relief of partition and separate possession. The plaintiff, defendant No.1,2,5 and deceased Sannamadamma are children of Patel Marigowda. According to the plaintiff, the suit schedule properties are the ancestral properties of plaintiff and defendant No.1 and 2.

8. Defendant No.2 to 4 in their written statement contended that, suit item No.1 and 2 are not ancestral properties and they are self acquired properties of their father Late.Patel Marigowda, having purchased item No.2 property through a registered sale deed dated:09.01.1975. Defendant No.2 was married to one Rachegowda @ Rachaiah as his 2nd wife. In

order to look after her father, defendant No.2 after her marriage stayed with her father. For the sake of security of his daughter, defendant No.2 herein, Late.Patel Marigowda executed a registered Will dated:18.06.1985 in favour of his daughter Maramma in respect of suit schedule properties. After the demise of her father, defendant No.2 got changed the khata of suit schedule properties into her name on the basis of registered will. Defendant No.3 is only daughter of defendant No.2. In the year 2006, defendant No.2 being the absolute owner of the suit schedule properties executed a relinquishment deed in favour of her daughter defendant No.3.

9. Now, defendant No.2 to 4 sought for permission to amend their written statement, wherein they intend to insert exact date of registered relinquishment deed and defendant No.3 was put in possession of suit schedule properties by defendant No.2 under the deed of relinquishment.

10. In para No.10 (b), they intend to state that, defendant No.3 has executed a registered gift deed dated:18.06.2010 in favour of her husband defendant No.4 herein in respect of suit item No.2 and he was put in possession of the same. In para No.10(c), they intend to state that, defendant No.4 has executed a registered gift deed dated:20.09.2011 in favour of his daughters and they were put in possession of the same. It is well settled that, the amendment which does not introduce new facts, but seeks to introduce only additional approach to the facts already pleaded is permissible. At the same time, the subsequent

events to be taken out of any amending pleading to reduce litigation. Further, they intend to take a contention that, the donees of gift deed dated:20.09.2011 by name D.S.Nisarga and D.S.Sahana are not made as party to the suit. Hence, this suit is bad for non joinder of necessary parties. Further, they intend to insert para No.10(e) wherein they contend that, the other alienated properties are not included in the suit. Hence, this suit is not maintainable.

11. Defendant No.2 to 4 have filed their written statement on 05.02.2011. Defendant No.2 to 4 are signatories to the said written statement. However, they did not plead about gift deed dated:18.06.2010 in the written statement. Apart from that, as argued by learned counsel for plaintiff, they kept quite all these years and now come up with the present application after lapse of 13-14 years. As I said earlier, initially the present suit was dismissed on 29.08.2018. The plaintiff has preferred an appeal in R.A.No.31/2018. In the said appeal matter is remanded to this court for fresh disposal.

12. Of course, as contended by learned counsel for plaintiff there is an inordinate delay in filing the application. But, inordinate delay in filing application by itself not a ground to refuse amendment. However, in order to advance the cause of justice and to afford opportunity, it would be just and proper exercise to allow the application. During the pendency of the suit, defendant No.4 has executed a registered gift deed in favour of his daughters. Of course, it is settled that, if any transaction

took place during the pendency of the suit, same shall be subservient to the decree to be passed in the suit as per Sec.52 of TP Act. The conduct of defendant No.2 to 4 in not disclosing the gift deed dated: 18.06.2010 in an earlier occasion is condemnable. However, the proposed amendment would not introduce any new defense.

13. The object of Order VI Rule 17 of C.P.C. is that, the courts should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining real question in controversy between the parties provided it does not cause injustice or prejudice to other side. It is well settled that while deciding an application for amendment of pleading, ordinarily the court should not refuse bona fide, legitimate, honest and necessary amendment. Conversely, it should not allow mala fide, dishonest or unnecessary amendment. Defendant No.2 to 4 in proposed para 10(d) and (e) want to take contentions that, suit is bad for non joinder of necessary parties and suit is bad for non inclusion of other alienated properties. The proposed amendments are not inconsistent with the earlier written statement of defendant No.2 to 4. It is well settled that, delay can be compensated by imposing appropriate cost. As discussed above, though the defendants have filed written statement on 05.02.2011, but they did not plead about gift deed dated:18.06.2010 in their written statement. Defendant No.4 executed gift deed dated:20.09.2011.

However, he did not intimate to the court about the said gift deed. Hence, it would be just and proper to impose exemplary cost while allowing the application. Under the above facts and circumstances of the case, this court is of the opinion that IA No.X filed by defendant No.4 deserves to be allowed. Hence, I proceed to pass the following:-

:- O R D E R :-

I.A. No.X filed by the defendant No.4 u/Order VI Rule 17 of CPC is hereby **allowed on cost of Rs.5,000/-**.

Defendant No.4 is permitted to carry out the amendment to the written statement and to furnish amended written statement within 3 days. If he fails to do the same, automatically suit will be jumped to next stage.

Defendant No.4 is directed to make payment of cost of Rs.5,000/- to the plaintiff within 3 days.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced by me in the open court on this the 11th day of January- 2024)

I Addl. Civil Judge & JMFC.,
Nanjanagud