

**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C., AT : CHANNAPATNA**

**BEFORE
Smt.SHUBHA,**

B.A.L., L.L.B.,
Senior Civil Judge & JMFC, Channapatna.

Dated this 21st day of October 2021

O.S.64/2016

Plaintiff :- Savithramma & Others

-V/S-

Defendant :- T.K.Nagesh

I.A. NO.11 & 12

Applicant/
Defendant : T.K.Nagesh
-V/S-

Opponent/
Plaintiff : Savithramma, Dead by Lrs.

I.A. NO. 13

Plaintiff :- Savithramma & Others
-V/S-
Defendant :- T.K.Nagesh

Applicant : Smt. Jayalakshmi D/o Late Umadevi
@ Vedarao, W/o Nagendra,
32 years, R/at Vajarahalli Village,
Bannerghatta Post, Bangalore 560 083.

ORDER ON I.A No. 11 to 13

1. The 1st Defendant has filed I.A.No.11 U/o 6 Rule 17 r/w/s/ 151 of CPC seeking permission of this court to amend the written statement, IA No.12 U/sec. 151 of CPC pleaded to reopen the stage of the case for adducing defendant evidence.
2. The IA No.13 is filed by the applicant U/o 1 R 10(2) of CPC praying to implead her as 2nd defendant in this suit.
3. The IA No.11 supported with the affidavit defendant and contended that the plaintiff has filed this suit against him for cancellation of registered sale deed and other reliefs in respect of the suit schedule properties. He filed written statement and at the time of filing of written statement, due to

oversight his previous counsel did not mentioned the name of 1 (c) M.K. Gayathri who is the sister of LR's 1 (a) and (b) of plaintiffs and also the extent of 2878, where in LR's of the plaintiffs got E katha jointly to the above said extent, which is stated in the IA. This mistake is only bonafide reason stated above and nothing else. Under this circumstance it is just and necessary to permit him to amend the written statement. If this application is allowed no loss or prejudice will be caused to the plaintiffs and if the application is not allowed he will be put to great injury and hence prayed to allow the application.

4. The IA No.12 supported with the affidavit defendant and contended that on 05.02.2020 the above case is posted for defendant evidence i.e., his side evidence. On that day he could not able to appear before this court. Because his father seriously fell ill and he attended his father in the hospital. Hence he could not able to meet his counsel to adduce evidence. Therefore, this court posted the

above case for arguments. The non adducing of evidence of his side is not an intentional and it is for bonafide reasons stated above. Under these circumstances it is very just and necessary to reopen the stage of the case for his side evidence. If this application is allowed no loss or prejudice will be caused to the plaintiffs and if the application is not allowed he will be put to great injury and hence prayed to allow the application.

5. In support of the I.A.No.13 the applicant has sworn to an affidavit and contended that she is the granddaughter of plaintiff Savithramma. The said Savithramma and Krishnamuthy have childrens namely Nanjundrao, Srinath, Umadevi @ Vedarao and Gayathri. She is the daughter of Umadevi @ Vedarao and Jayasimha is her brother.

6. She further stated in her affidavit that the schedule property bearing Town Municipal Khata No.4496 and property No.2217 situated at Ward No.6, Kuvempunagara, 2nd cross, was originally

allotted to her grand father Krishnamurthy as per the orders of Municipal Office and in the said property her grand father Krishnamurthy, grand Mother Savithramma and their sons Nanjundarao, Srinatha, daughters Umadevi @ Vedarao and Gayathri were in joint possession and enjoyment. After the death of her Grand father Krishnamurthy, her grand mother Savithramma and all her children were in possession and enjoyment of the said property and her mother Umadevi @ Vedarao also in joint possession and enjoyment. Her mother Umadevi died on 10.4.2011 and after the death of her mother she is joint possession of the said property along with above said persons.

7. It is further stated in the affidavit that though she is in joint possession and enjoyment of the said property without her knowledge the defendant T.K. Nagesh has created the documents in respect of 'B' schedule property on 11-09-2015 under document No.CAN-1-02969/2015/16 and after coming to know

the same her grand mother has filed this suit for cancellation of said document and during the pendency of the suit her grand mother died and after her death plaintiff No.s 1(a)Nanjundarao, 1(b)M.K.Srinath, 1(b)(1) Sharadha, 1(b)(2) SrikanthS. 1(b)(c) Pavankumar, 1(b)4 Archana, and 1(c) Gayathri were impleaded. She and her brother were also legal heirs and she has not been made as party in the suit and she has also got equal share and interest in joint possession and enjoyment of the said property. If this application is allowed no hardship or injury will be caused to other side. If this application is not allowed she will be put to great hardship. Hence prayed to allow this application to implead her as 2nd defendant in this suit.

8. On the other hand, the LR1(a) of the plaintiff has filed the objection to the above said IA No.11 contended that the application filed by the defendant for amendment of the written statement as sought in the said application is not maintainable under the

provisions of the amended Code of Civil Procedure 2002. The provisions of the amended CPC is very clear once the trial has commenced no such application is to be allowed. The above case was posted for arguments on 09.03.2020. the defendant has come up with the application for amendment after completion of the evidence and cross examination of PW1 and after granting sufficient time for defendant's evidence, the defendant has not chosen to produce any evidence and that the above case was posted for arguments on the main suit on 05.02.2020. The defendant has already filed on application for amendment of the written statement, after adducing the plaintiffs evidence, the said application came to be allowed by this court. The averments made in para 3 of the affidavit accompanying the application, it is false to state that due to oversight of the previous counsel of the defendant, the amendment sought for in the present application is not included. The main intention behind filing of this application by the defendant is

solely to protract the proceedings in the above case. The application filed by the defendant seeking amendment of the written statement is devoid of merits for the reason, the above suit is for cancellation of the sale deed and not for partition.

9. No objections filed to I.A.No.12.

10. On the other hand, the LR1(a) of the plaintiff has filed the objection to the above said IA No.13 contended that the application filed by the proposed applicant to implead her as 2nd defendant is not maintainable either in law or on facts. Hence the same is liable to be dismissed in limine with cost. The averments made in para 1 of the affidavit accompanying the application, it is for the proposed defendant to prove the same. The averments made in para 2 and 3 of the affidavit accompanying the application are hereby admitted. The averments made in para 4 of the affidavit accompanying the application, except with regard to implead the proposed applicant as the 2nd defendant, the rest of

the averments made in the said para are hereby admitted. The averments made in para 5 of the affidavit accompanying application that, it is for the proposed defendant to prove the same. The above suit has been filed by the plaintiff for cancellation of the sale deed dated 11.09.2015 registered in the office of the Senior Sub Registrar, Channapatna direct the defendant to reconvey the B schedule property in favor of the plaintiff. In the event of the defendant filing to reconvey the B schedule property in favour of the plaintiff, the court may appoint an official of this court to reconvey the same in favour of the plaintiff, direct the defendant not to encumber or create any charge over the schedule B property and to grant costs of the suit. Such being the case, the plaintiff has not sought the relief of declaration/partition, as such the proposed applicant is not necessary party to be impleaded as 2nd defendant in the above case. If at all if the proposed defendant having any right over the suit schedule property, the same is not going to be adversely affect in any

manner to the proposed defendant, as such the proposed defendant is not required to be brought on record as defendant No.2. Therefore, prays this court to dismiss the application.

11. I have heard the arguments of learned advocates for both the parties on I.A.No.11 to 13. Now the points that arise for my consideration are;

POINTS

- 1 Whether the application i.e., I.A.No.11 filed by the defendant U/O 6 rule 17 r/w/s/151 of CPC deserves to be allowed?
- 2 Whether the application i.e., I.A.No.12 filed by the defendant U/s 151 of CPC deserves to be allowed?
- 3 Whether the application i.e., I.A.No.13 filed by the applicant/Uo 1 Rule10(2) is deserves to be allowed?
- 4 What order ?

12. My findings to the above points are as follows:-

Point Nos.1 to 3: In the Affirmative.

Point No.4 : As per the final order
for the following :

REASONS

13. **Point Nos.1 to 3** : In this case the defendant No.1 has filed this application to add certain words in the para No.3 Page No.2 line No.11 after the name “Srinath” of the written statement. By way of said amendment no new facts are introduced by the defendants. Therefore, the said amendment is not barred by law of limitation. The said amendment does not cause any hardship to the plaintiff's case. Therefore, the said amendment is necessary for the proper adjudication of this suit and defendant No.1 must be permitted to lead evidence. Hence IA No. 11 and 12 deserves to be allowed.

14. The present suit filed by the plaintiff is for cancellation of sale deed and also for recovery of “B”

Suit Schedule property from the defendants. In this case all the Legal heirs of the original plaintiff Savithramma were brought on record. But, the present plaintiff who claims to be the daughter of Late Umadevi @ Vedarao is not impleaded. Therefore if this suit is decided in her presence it will avoid unnecessary multiplicity of proceedings. Hence, IA No.13 also deserves to be allowed. Hence, I answer the **Point No.1 to 3 in the Affirmative.**

15. POINT NO.4 :- In view of my findings given on Point No.1 for the reasons discussed herein above paragraphs, I proceed to pass the following:

O R D E R

The I.A.No.11 filed on behalf of the defendant No.1 U/O 6 Rule 17 r/w/s/ 151 of CPC is hereby allowed. The I.A.No.12 filed on behalf of the defendant No.1 u/Sec. 151 of CPC is hereby allowed.

The I.A.No.13 filed on behalf of the applicant U/o 1 R 10(2) of CPC is hereby allowed.

The defendant is permitted to carry out necessary amendment in the written statement. The defendant No.1 is permitted to lead evidence. The proposed defendant No.2 is impleaded as defendant No.2. The plaintiff is directed to carry out necessary amendment in the plaint.

For amendment and amended plaint and also for amendment and amended written statement.

Call on 02.11.2021

(Dictated to the Typist-Copyist directly on the computer system, corrected & initialed and then pronounced by me in the open court on this the **21nd day of October 2021**)

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(Smt. Shubha)
Senior Civil Judge & JMFC,
Channapatna.

Orders on I.A.No.11 to 13
pronounced in open court

O R D E R

The I.A.No.11 filed on behalf of the defendant No.1 U/O 6 Rule 17 r/w/s/ 151 of CPC is hereby allowed. The I.A.No.12 filed on behalf of the defendant No.1 u/Sec. 151 of CPC is hereby allowed.

The I.A.No.13 filed on behalf of the applicant U/o 1 R 10(2) of CPC is hereby allowed.

The defendant is permitted to carry out necessary amendment in the written statement. The

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defendant No.1 is permitted to lead evidence. The proposed defendant No.2 is impleaded as defendant No.2. The plaintiff is directed to carry out necessary amendment in the plaint.

For amendment and amended plaint and also for amendment and amended written statement.

Call on 02.11.2021.

(Shubha)
Senior Civil Judge & JMFC,
Channapatna.