

**ORDERS ON IA.V**

The plaintiffs have filed I.A. U/o. VI rule 17 R/W/S 151 of CPC seeking permission to amend the plaint adding/deleting proposed amendment in the plaint.

**AMENDMENT SOUGHT FOR**

1.In page 5 after end of Para No.4, to add;-para 4a:-plaintiff submits that after tribunal order they are continued in cultivation of land whatever they cultivated before filing form No.7, as per tribunal order Thasildar Channapatna change katha of Sy.No.156 measuring 2 acre 19 guntas out of that 7 guntas kharab, in Sy. No.60 to extent of 14 guntas and in Sy.No.63 extent of 5 guntas transfer in favour of Ningegowda, but Khatha of suit Sy.No.are not changed, same was noticed earlier filing of suit. Plaintiffs or Ningegowda not filed any application before Thasildar per transfer of khata as per tribunal order, but he changed by suomoto without any application, leaving of suit Sy.No.'s are not known, transfer of khata of Sy. No.'s at the instance of defendants 1 to 3, by leaving suit Sy.No's as directed

by them. Said facts came to knowledge of plaintiffs, when defendants 1 to 6 filed complaint before Akkur Police in the year 2016 against them and filed suits, there after plaintiffs filed application for transfer of katha, immediately revenue officials reluctant to transfer katha and issued endorsement at the say of defendants 1 to 6 and protected land lord names in suit Sy. No's till today without accepting mutation of plaintiffs. There after defendants 1 to 6 created encumbrances over schedule property and filed suit in the year 2016. Katha proceedings were stalled at the instance of defendants by revenue officers, without any information, nor notices issued to plaintiffs till today, plaintiffs kept quiet Katha will be carried out as per tribunal orders as like other Sy.No.'s but revenue officials leaving suit schedule properties at the instance of defendants 1to 6. Revenue authorities while transfer katha of Sy.No's mentioned in tribunal order by pick and chose as per direction of defendants without applications from plaintiff and other tenants. Plaintiff further came to know that some of the properties were transfer in favour of tenants who are favorable to defendants. Said facts are not within the knowledge of all tenants

mentioned in tribunal order, but known to us after filing of suit by defendants.

2. In page 6 schedule in Item No.2, 3<sup>rd</sup> line after the words of guntas to delete the words out of that 2 acres if land'

2. The said application is supported by the affidavit of the plaintiff stating that this suit is filed for the relief of declaration and injunction against the defendant. Further submitted that I submits that, we have filed above suit against defendants for declaration and injunction. At the time of drafting plaint present amendment was left over due to typographical error, same was noticed when the defendants canvas the said facts are intentionally left by us while drafting plaint and taking advantage of it, as such I advice to file this application to add the proposed amendment in the plaint. Present amendment is very well known to defendants that cannot be hide as themselves done this act without

any applications for transfer of khatha on behalf of tenants. By non-mentioning of above facts itself is plaintiff not approach the Hon'ble court in clean hands as defendants took defense in their written statement, as such present application is filed to add those things in the plaint. Before going to adduce evidence I thought it to clear the doubts of defendants by adding proposed amendment. If the application is allowed I may be permitted to amend the plaint by adding the proposed amendment mentioned in the application no harm or injury will be caused to other side and it is not barred by limitation. Same is refused I will be put to irreparable loss and injury which cannot be compensated in terms of any means. Balance convenience lies in my favour to allow the application.

Hence prays to allow the application.

**4.** The counsel for defendant No.6 has filed objection to the above application and contended that, the application is not maintainable either in law

or facts of the case, frivolous, misconceived and devoid of merits the same is liable to be dismissed with cost. The plaintiff has filed this application for amendment in length after framing of issues and posted for evidence of plaintiff. The application is filed at belated stage, if this application allowed leads to complex of the case, and introduces new case. The proposed amendment would not help this Hon'ble court to come to clear conclusion of the case, but only to get confused the amendment is sought. The application filed only to protract the case. This suit of the year 2017 now the plaintiff have come up with this frivolous application.

**4.** The counsel for defendant No.1 has filed objection to the above application and contended that the filing of Form No.7 is not a ground to file a suit for declaration and to amend the plaint. The plaintiff has come before this Hon'ble court with a definite case that the land Tribunal, Channapatna had granted occupancy rights of the suit schedule

properties and issued Form No.10 in his favour. The Form No.10 clearly reveals that the suit schedule properties were not granted in favour of the plaintiff. That the Form No.7 was registered as No.LRF/413/1981-82 and the plaintiff was granted only Sy.No.156, 60 and 63 after survey and phodi was conducted as per the Land Tribunal order with definite boundaries and extent and after the plaintiff herein paid kimmath for the same. Thus the entire averment in the proposed amendment is unwarranted, false and concocted. That this Hon'ble court has no jurisdiction to decide or deliberate upon the correctness of the order passed by the land Tribunal and the amendment is not at all necessary for the full and final adjudication of the matter in dispute. That the reason given by the plaintiff for the proposed amendment is unbelievable and the very reading of the plaint clearly reveals that the plaintiff has not made out any grounds to allow the proposed amendment. That the above suit was filed in the year 2016 and this defendant has filed his written statement in 2017 itself. Now the plaintiff has come up with this amendment application in the year 2022 which is not at all maintainable and not bonafide.

The proposed amendment is outside the purview of the relief sought by the plaintiff in the plaint. Hence the plaintiff is not entitled for allowing the present application. That the present application is an afterthought of the plaintiff which has been filed after the M.A. 12/2020, 14/2020, 15/2020 and 16/2020 preferred by this defendant were allowed by the Hon'ble Court of Senior Civil judge and JMFC, Channapatna where in the above said appeals dealt with the same Land Tribunal Order. That the plaintiff has filed the present application only with an intention to drag the proceedings and to harass the defendant No.1 who is a senior citizen. That if the present application is allowed, it will change the nature of the suit and will lead to fresh cause of action which is barred by law.

5. On the basis of the above, point for consideration is that:

**Whether the plaintiff has made out sufficient grounds to allow the I.A. No.5 ?**

6. Heard arguments. Perused materials on record.

7. My findings on the above point is in the "**Affirmative**" for the following:

### **REASONS**

8. The plaintiffs has filed this suit for Declaration and possession. The plaintiff has filed this application to amend the plaint seeking permission to amend the plaint.

9. On perusal of the pleadings, it is seen that the plaintiff has pleaded for Declaration and possession. But now he intended to amend the plaint. In the affidavit annexed to the I.A. it is stated that at the time of filing of the above suit , in cause title address were wrongly stated as I have given wrong information to my advocate. Now the plaintiff came to know that the names of the fathers must be incorporated in the above suit which is not intentional one. If amendment is allowed it will not change the nature of the suit. Hence, in the interest of justice, it is just and necessary to allow the application.

10. Therefore, holding that amendment of plaint would not lead to grave injustice and serious prejudice to the defendants, I answer the above point in the "Affirmative" and I proceed to pass the following:

**ORDER**

The IA. V filed by the plaintiff U/o. VI rule 17 r/w/s 151 of CPC is hereby allowed.

Permitted to plaintiffs amend the plaint and furnish amended plaint.

Call on 12.12.2022.

Addl. Civil Judge and JMFC.,  
Channapatna.