

KARN320000272021



**IN THE COURT OF THE II ADDL. CIVIL JUDGE & J.M.F.C.,**  
**AT KANAKAPURA.**

Present: Smt. Savita Rudragouda  
Chikkanagoudar., *B.A., LL.B.*,  
II Addl. Civil Judge & JMFC,.  
Kanakapura.

**Dated: This 16<sup>th</sup> day of October 2024**

**O.S. No.12/2021**

**Plaintiff:** Smt. Kumari

**(By Sri. L.H.P., Adv.)**

**//Vs.//**

**Defendants:** Smt. Saraswathi and another

**(By Sri. S.M.V., Adv.)**

**I.A.No.4**

**Plaintiff :**

**Applicant :** Smt. Kumari

**-V/S-**

**Defendants:**

**Opponents :** Smt. Saraswathi and another

\* \* \* \* \*

**ORDER ON I.A. No.4 UNDER ORDER VI RULE 17 R/w**  
**SEC 151 OF CPC FILED BY THE PLAINTIFF**

The present application is filed by the plaintiff under order VI Rule 17 Read with section 151 of the Civil Procedure Code to permit her to amend the plaint body part and prayer column of the plaint in the interest of justice and equity.

2. In the affidavit accompanying the application, the plaintiff states that, in the body of the plaint in para No.2, in the 25<sup>th</sup> line after in possession to plead the facts that the original sale deed is with the defendant and that the defendant cheated the plaintiff at the time of registration of the sale deed and wants to state that earlier it was decided that the plaintiff and one Smt.H.P.Lakshmi @ Laxmamma.H.P and Saraswathi i.e.,

defendant No.1 would get the joint registration of the property but at the time of registration the defendants without informing the plaintiff and without obtaining her permission and permission of Smt.H.P.Lakshmi @ Laxmamma.H.P bifurcated the site into 3 parts by making the sale deed showing the front portion in the name of defendant and middle portion in the name of plaintiff and the last portion to Smt.H.P.Lakshmi @ Laxmamma.H.P and the plaintiff when raised the objection on the same the defendant No.1's husband told the plaintiff to get the sale deed registered first and then they will sit and compromise the matter. If the registration is not done now its difficult to bring all the 18 vendors to gather again. Hence, the plaintiff without alternative got the sale deed registered but the defendant No.1 or her husband later did not come for any talk and also refused to give the original sale deed to the plaintiff and to Smt.H.P.Lakshmi @ Laxmamma.H.P and by way of a proposed amendment

plaintiff wants to explain the facts relating to the above said matter and also in the prayer column seeks permission to add in prayer para A1, 2<sup>nd</sup> line after pillar and paya, 3 feet encroached by the defendant on the suit schedule "A" property. Hence prays to allow the amendment. The plaintiff also states that, if the proposed amendment is not allowed, she would be put to irreparable loss and injury. Hence prays to allow the application.

3. On the other hand, in the objection filed to the said application by the defendants, the defendants denying the contentions taken by the plaintiff submit that, defendant No.1 is the absolute owner in possession and enjoyment of the property bearing Kanesumari No.363/390/3 by virtue of a registered sale deed dated 05.04.2008 and since from the execution of said sale deed, the defendant No.1 and her family members are in possession and enjoyment of the

property having got the katha in the name of defendant No.1 but plaintiff by suppressing the said facts with an intention to trouble the defendants has filed this frivolous application. The defendants also states that, the vendors of the defendants are the common vendors to the sale deed obtained by the plaintiff also and hence even the plaintiff has witnessed the execution of the sale deed obtained by the defendant No.1 but now has approached the court by suppressing the said facts with unclean hands, on the said grounds the defendants state to dismiss the I.A filed by the plaintiff as she is not entitled to any equitable relief of injunction. The defendants also state that, the plaintiff is trying to drag on the case without leading her evidence and has filed the present application without any valid reasons being mentioned in the application by creating the false story and hence prays to dismiss the application.

4. Heard and Perused the material placed on record.

5. Now the points that would arise for my consideration are as follows:-

1. Whether the plaintiff has made out grounds that proposed amendment would be necessary for adjudication of the matter in question effectively ?

2. What Order?

6. My answer to the above points is as follows.

Point No.1: In the Affirmative.

Point No.2: As per the final order  
for the following;

### **REASONS**

7. **Point No.1:** The present suit is filed by the plaintiff seeking the relief of permanent injunction against the defendants, their agents, servants or anybody acting on their behalf from interfering with the plaintiff peaceful possession and enjoyment of the suit "A" and "B" schedule properties and for mandatory injunction to remove the pillar and paya on the suit schedule property, on the ground that plaintiff is the

absolute owner of the suit schedule "A" property having purchased the same under the registered sale deed dated 05.04.2008 and now when the matter is posted for plaintiff evidence she is seeking the present amendment to permit her to amend body of the plaint after the term possession in 25<sup>th</sup> line para No.2 the facts relating to the fraud allegedly committed by the defendants on the plaintiff. According to plaintiff the original sale deed is with the defendants and at the time of registration of the sale deed firstly it was decided to get the joint registration in the name of plaintiff and one Smt.H.P.Lakshmi @ Laxmamma.H.P and the defendant i.e., Saraswathi but at the time of registration the defendant by cheating the plaintiff without obtaining the permission of the plaintiff and Smt.H.P.Lakshmi @ Laxmamma.H.P got the site bifurcated in 3 parts in the sale deed showing the front portion in the name of defendant, middle portion in the name of plaintiff and last portion in the name of

Smt.H.P.Lakshmi @ Laxmamma.H.P and when the plaintiff raised the objection regarding the same, the husband of the defendant told the plaintiff that after the registration they will sit and compromise the matter and to get the sale deed registered now as it is difficult to bring all the 18 vendors to gather later and hence without alternative even the plaintiff got sale deed registered but later the defendants did not turned up nor they gave the original sale deed to the plaintiff or Smt.H.P.Lakshmi @ Laxmamma.H.P. Hence, now by way of a proposed amendment wants to state the facts regarding the same in her plaint and also by way of proposed amendment in the prayer column wants to state the portion allegedly encroached by the defendant over the "A" schedule property.

8. To the said amendment the defendants have filed the objection by contending that, defendant No.1 is the absolute owner in possession and enjoyment of the property in kanesumari No.363/390/3 and the

defendant No.1 got acquired the rights over the said property under the registered sale deed dated 05.04.2008 and the vendors of the plaintiff and the defendant No.1 are common vendors to the sale deed obtained by the plaintiff also and even the plaintiff has witnessed the execution of the sale deed in favour of defendant No.1 but now by suppressing the said facts with an intention to trouble the defendants has filed the present application but so far as the objection taken by the defendants is concerned it can be said that, the proposed amendment by which the plaintiff wants to state the facts also relates to the same thing regarding the registration of the sale deed by the plaintiff and the defendant No.1 along with Smt.H.P.Lakshmi @ Laxmamma.H.P but the only contention of the plaintiff is that, at the time of execution of the sale deed the defendant No.1 and 2 have cheated on her and on Smt.H.P.Lakshmi @ Laxmamma.H.P. Hence, this court is of the considered opinion that, if the proposed

amendment is allowed, no hardship or prejudice would be caused to the defendants as even the defendants admit that the vendors of the plaintiff and the defendant No.1 are the common vendors and also admit the execution of the sale deed dated 05.04.2008 and further as amendment in the prayer column is to state the encroached portion, this court is of the opinion that, if the proposed amendment is allowed it would assist the court in adjudication of the matter and at the same time as the proposed amendment is sought when the case is still posted for plaintiff evidence and the evidence is not yet commenced, the defendant would get an opportunity to cross-examine the plaintiff and also to rebut the case of the plaintiff.

9. As the intention of inserting Order VI Rule 17 of CPC is for promoting ends of justice and not to defeat them therefore, it is a general rule to grant the amendment and to refuse the same is an exception. Even though in the present application the plaintiff has

sought permission to allow her to add proposed amendment at the trial. The amendment is only supplementary relief to what she has sought earlier. The proposed amendment assists the court to comprehensively decide all the questions pertaining to suit property in one suit and also helps to avoid multiplicity of proceedings. Further, merely allowing amendment application in itself would not amount to grant of relief sought in the proposed amendment, the burden still remains on the plaintiff to establish the claim made and it will not cause any serious prejudice to the defendants because as against the proposed amendment it is always open for the defendants to file additional written statement and to lead rebuttal evidence and to cross examine plaintiff. Hence, for the above stated reasons, I am of the considered opinion that, granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation and if the present application is not allowed then it

would not be possible to adjudicate the case in totality.  
Hence, I answer **Point No.1 in the Affirmative.**

10. **Point No.2:** For the reasons discussed above, I proceed to pass the following.

**ORDER**

I.A No.4 filed under Order VI Rule 17  
R/w Sec.151 of CPC by the plaintiff is  
hereby allowed.

Plaintiff shall carry out amendment  
as prayed for and furnish amended  
plaint.

(Dictated to the Stenographer directly on computer, then corrected and pronounced by me in the Open Court on this **16<sup>th</sup> day of October 2024**)

**II Addl. Civil Judge & JMFC.,  
Kanakapura.**