

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

**PRESENT : Smt.Hemashree D.
B.A.L., L.L.B.,**

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

Dated this the 19th day April 2017

OS.No.53/2007

Between:

Plaintiffs : Sri. Prabuveerswami & others

V/s

Defendant: Sri. Honnegowda & another

ORDER ON IA NO. VIII U/O-VI R 17 CPC

This application is filed by the plaintiffs seeking to amend the plaint.

1. It is stated in the accompanying affidavit that the defendants in their written statement have contended that subject to the mortgage deed dated 29-04-1974 the plaintiffs' father sold the suit schedule properties in favour of the mother of the defendants through sale deed dated 26-04-1980. It is further stated that the said sale deed dated 26-04-1980 is illegal and void ab-initio. Accordingly, the plaintiffs have sought for declaration that they are the absolute owners of suit schedule

property and to declare that the sale deed dated 26-04-1980 is null and void.

2. In spite of grant of sufficient time the defendants have not filed objection to the present application.

3. Heard and perused the materials on record.

4. The following points arise for my consideration.

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

2. What order?

5. My answers to the above points are as follows:

Point No.1: In the negative

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

REASONS

6. POINT NO.1: The plaintiffs have filed the suit for redemption of usufructuary mortgage deed dated 29-04-1974. It is stated by the plaintiffs that the defendants have contended in their written statement that the father of the plaintiffs subject to the above mortgage deed sold the suit schedule property in favour of the defendants' mother through sale deed on receipt of the total sale consideration. Now the plaintiffs by deleting the prayer of redemption of mortgage are seeking to substitute it by

the prayer for declaration that they are the absolute owners of the suit schedule property and that the said sale deed is null and void.

7. It is well settled that amendment cannot be allowed which alters or changes the nature of suit and it must also not introduce new cause of action. In this case the plaintiffs have sought to alter the very nature of the suit. The suit filed for redemption of mortgage is being converted into a title suit. Since the plaintiffs are required to prove the execution of mortgage deed the proposed amendment is not required to determine the real controversy between the parties. Moreover, the proposed amendment will change the nature of suit which cannot be allowed. Accordingly, **Point No.1 is answered in the Negative.**

8. POINT NO.2: In view of the above discussion, I proceed to pass the following;

ORDER

The IA No.VIII filed by the applicants under order VI Rule 17 CPC is dismissed on cost of Rs.100/- .

(Dictated to the Stenographer, typed by his and corrected and pronounced by me in the open court on this 19th day of April 2017).

(HEMASHREE .D)
II Addl. Civil Judge, &.J.M.F.C.
Kanakapura.

ORDER

The application filed by the applicants under order I Rule 10(2) CPC is allowed.

The applicants are brought on record as defendants No.2 and 3.

No order as to costs.

(HEMASHREE .D)
II Addl. Civil Judge, &.J.M.F.C.
Kanakapura.

ORDER

The application filed by the applicants under order
I Rule 10(2) CPC is allowed.

The applicants are brought on record as defendants
No.2 and 3.

No order as to costs.

(HEMASHREE .D)
II Addl. Civil Judge, &.J.M.F.C.
Kanakapura.

ORDER

(Vide Separate Order)

IA III filed U/o I Rule 10 CPC is rejected.

No order as to costs.

**(HEMASHREE .D)
II Addl. Civil Judge, &.J.M.F.C.
Kanakapura.**