

KARN320001442009



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

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

Dated: This 04th day of November 2023

O.S. No. 25/2009

Plaintiffs/ :

1. Smt. Devamma
W/o late Dasegowda
Aged about 55 years,
2. Sri. Girigowda
S/o late Dasegowda
Aged about 33 years,
3. Sri. Prabhu
S/o late Casegowda
Aged about 30 years,
4. Smt. Saraswathi
W/o Shivakumar
Aged about 25 years,

5. Smt. Jayamma
W/o Shivu
Aged about 55 years,
6. Kum. Pavithra
S/o late Dasegowda
Aged about 19 years,

All are R/at:
Kalegowdana Doddi,
Hamlet of Cheelur Village,
Maralavadi Hobli,
Kanakapura Taluk.

(By Sri. Ramachandra, Adv.)

//Vs.//

- Defendants/ :**
1. Sri. Girigowda
S/o Honnegowda
Aged about 65 years,
R/at: 3rd Cross,
Behind Magove Theater,
Shivayogeshwara Nagar,
Haveri District.
 2. Sri. Honnappa
S/o Venkategowda
Aged about 60 years,
R/at: Srinivasa Nilaya
4th Main, 3rd Cross,
Sheshadripuram,
Shivamogga District.

**(By Sri. R.Mahesh Chandra Guru,
Adv. for D2 & Exparte for D1)**

I.A.No.III**Plaintiff/s :****Applicant/s :** Smt. Devamma and Others

-V/S-

Defendant/s:**Opponent/s:** Sri. Girigowda and Another**ORDER ON I.A.III UNDER ORDER VI RULE 17 R/w SEC 151
OF CPC FILED BY THE PLAINTIFFS**

The plaintiffs have filed an application under Order VI Rule 17 R/w Sec.151 of CPC to permit them to amend the plaint in the interest of justice and equity.

2. In the application the plaintiffs have sought the permission to add para No.3(a) in the main body of the plaint and in the prayer column to delete serial No.(b) in page No.5 and in its place to add Serial No.(c) and also in the prayer column to add serial No.(d) for possession of suit schedule properties and in the schedule to add item No.2 the land bearing Sy.No.420/4B, measuring 21 guntas.

3. In the affidavit accompanying the application, the plaintiff No.3 swearing the affidavit for himself and the other plaintiffs states that, they are the absolute owners of the property

bearing Sy.No.420/4B measuring 21 guntas situated Cheeluru Village, Maralavadi Hobli, Kanakapura Taluk, and the said property originally belonged to their father Sri.Dasegowda and the katha of the said property stood in his name and the defendants have no manner of right, title, interest or possession over the same but the second defendant illegally got the katha transferred in his favour with respect to said property by colluding with revenue officials and on the strength of it they trespassed into the said property tried to dispossess the plaintiff and the defendants have not cared the requests of the plaintiff not to act illegally and the defendants not only proclaimed in the locality that they will dispossess the plaintiffs from the said property but about 15 days back they actually dispossessed the plaintiff from the said property denying the rights of the plaintiffs. Hence, the plaintiffs have sought the present amendment in relation to said property and they also state that, the amendment sought will not change the nature of the suit and it is necessary for the proper adjudication of rights of the parties and if the same is not allowed it will cause great injustice and hardship to the plaintiffs. Hence, prays to allow the application.

4. On the other hand, the said application is objected by the second defendant and in his objection the second defendant contends that, the plaintiff have no manner of any right, title,

interest whatsoever over the suit schedule property as well as the property which they are seeking to add in the plaint schedule. According to second defendant, he is the absolute owner in possession and enjoyment of suit schedule property and the property which the plaintiffs are now seeking to add by way of an amendment. The second defendant contends that, the said property earlier belonged to his father deceased Sri. Venkategowda and he had allegedly purchased the said agricultural land measuring 1 acre 30 guntas excluding 10 guntas of Kharab in sy.No.420/4 the original mother Survey Number of suit schedule property and the proposed property situated at Cheeluru Village, Maralavadi Hobli, from its previous owner Sri. Salagirigowda son of Sri.Honnegowda of Kadegowdana Doddi Village, under registered sale deed dated 20.07.1967 and after the said purchase he was in possession and enjoyment of said land and after his death second defendant and his brother Sri.Neelegowda being the legal representative to his estate succeeded the said properties and later in a partition which took place between them, the second defendant got the suit schedule property and the proposed property allotted to his share and thereafter, he is in possession and enjoyment of said properties. The second defendant also contends that, the above said land measuring 1 acre 30 guntas excluding 10 guntas in survey number 420/4 was divided into two survey numbers 420/4A and

420/4b and the revenue records with respect to both the properties where made out in his name as per the mutation proceedings. Hence, neither the plaintiffs nor the first defendant have any right over the both the properties and that the present amendment sought is not at all necessary to decide the matter in dispute and said application is filed just with an intention to harass the defendant and to drag on the proceedings. Hence, prays to reject the application.

5. Heard and Perused the materials placed on record.

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

1. *Whether the plaintiffs have made out ground that proposed amendment would be necessary for adjudication of the matter in question effectively ?*

2. *What Order?*

7. My answer to the above points as follows.

Point No.1: In the Affirmative

Point No.2: As for the final order

for the following;

REASONS

8. **Point No.1:-** The plaintiffs have filed the present suit seeking the relief of declaration and injunction with respect to

land in Sy.No.420/4A measuring 33 guntas excluding 17 guntas situated at Cheeluru Village, Maralavadi Hobli, and during the pendency of the suit they have filed the present I.A.No.III seeking permission to amend the plaint so as to add item No.2 i.e. land bearing Sy.No.420/4B measuring 21 guntas situated at Cheeluru Village, Maralavadi Hobli, and to add in the prayer column “for possession of suit schedule properties” on the ground that they are the absolute owners of the property sought to be added in the plaint by way of an amendment and it originally belonged to husband of the first plaintiff and the father of the other plaintiffs by name Sri.Dasegowda but the second defendant who had no manner of any right, title, interest over the same has illegally got transferred the katha in his name and on the same strength has trespassed into the said property and has also dis-possessed them from the said property about 15 days back from the date of filing of this application by denying their right. Hence, prays to allow the application contending that the same will not change the nature of the suit and is also necessary for the purpose of proper adjudication of right of the parties and the same will not cause any hardship to the defendant.

9. On the other hand, the said application is objected by the second defendant on the ground that plaintiffs have no manner of any right, title, interest whatsoever over the suit schedule

property or the property which they are seeking to add by way of an amendment. According to second defendant, the mother survey number of suit schedule property and the property sought to be added by way of an amendment, both were part of original mother Sy.No.420/4, which totally measured 1 acre 30 guntas excluding 10 guntas of Kharab situated at Cheeluru Village and the same was purchased by his father Sri.Venkategowda under a registered sale deed dated 20.07.1967 from its earlier owner Sri.Salagirigowda son of Sri.Honnegowda and after death of his father, in a partition which took place between the second defendant and his brother Sri.Neelegowda, the suit schedule property and the proposed property allotted to the share of second defendant and the mother survey number was divided into Sy.No.420/4A and 420/4B and the katha of the same was also mutated in his name, as a result neither the plaintiffs nor the first defendant had any right over the suit schedule property or the property sought to be added by way of an amendment and also contends that the said application filed just to harass the defendant and to drag on the proceedings. Hence, prays to reject the application.

10. Here, it is a notable fact that, the present application is filed at pre-trial stage and the trial has not yet commenced, such being the situation the application to amend the plaint must be

liberally looked into, apart from that it is a notable fact that, the suit schedule property which is mentioned in the plaint schedule and the property which the plaintiffs are seeking to add by way of an amendment, both the properties are parts of mother survey number i.e. Sy.No.420/4 which was later sub-divided into 420/4A and 420/4B and both plaintiffs and second defendant are claiming to be the absolute owners of the said properties. Under such a circumstances it is necessary to allow the proposed amendment, as the same will help to adjudicate all the disputes which are existing between the parties with respect to same properties and it also helps to avoid the multiplicity of proceedings between the same parties with respect to same properties. So far as the objections taken by the second defendant are concerned same cannot be considered at this stage and requires the full fledged trial.

11. 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. Merely allowing amendment application in itself would not amount to grant of relief sought in the proposed amendment, the burden still remains on the plaintiffs 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 lead rebuttal evidence and to cross examine plaintiffs, so far as proposed amendment is concerned.

12. Hence, I am of 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.**

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

ORDER

I.A.III filed under Order VI Rule 17 r/w Sec.
151 of CPC by the plaintiffs is hereby allowed.

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

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 04th day of December 2023)

Sd/-
I Addl. Civil Judge & JMFC.,
Kanakapura.