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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 27th day of October 2022

O.S. No. 63/2009

Plaintiffs/ : Smt. S.Manjula
D/o Sriram and
Late Madamma
Aged about 30 years,
R/at: 5th Cross,
Housing Board Colony,
Kanakapura Town,
Ramanagara District.

(By Sri. M.Kalaiah, Adv.)

//Vs.//

- Defendants/ :**
1. Smt. Thulasamma
2nd W/o late Madegowda
Aged about 45 years,
 2. Smt. Devamma
W/o late Chikkegowda
Aged about 65 years,
 3. Smt. Parvathamma
D/o late Chikkegowda
Aged about 38 years,
 4. Sri. Lakshmana @ Sanna
S/o late Chikkegowda
Aged about 35 years,
 5. Shivarudregowda
S/o late Chikkegowda
Aged about 33 years,
 6. Smt. Karakamma
D/o late Chikkegowda
Aged about 29 years,
 7. Sri. Mohammed Iliyaz
S/o Mohamed Haneef,
Aged about 40 years,
R/at: Thimmasandra Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

8. Smt. Manjula
D/o late Madegowda
Aged about 32 years,

9. Sri. Rajesh
S/o late Madegowda
Aged about 30 years,

10. Smt. Sukanya
D/o late Madegowda
Aged about 28 years,

D1 to 6 & D8 to 10 are R/at:
Hosahonagana Doddi Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. V.Sampangi Ramaiah, Adv.
for D3 to 6, Exparte for D1 & 2)

I.A.No.XII

Plaintiff/s :
Applicant/s : Smt. S.Manjula

-V/S-

Defendant/s:
Opponent/s : Smt. Thulasamma and Others

**ORDERS ON I.A.XII 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 151 of the Civil Procedure Code to permit her to amend the plaint.

2. In the application the plaintiff has sought the permission to add **Para No.5(a) stated in the application and also to add in prayer column para No.(b)1:** For a declaration that, the registered sale deed bearing document No.KNK-1-00072/2009-10 date 04.04.2009 is invalid, null and void, ab-initio and the same is not binding on her share.

3. In the affidavit accompanying the application sworn by the plaintiff, it is stated that plaintiff has filed the suit for relief of partition and separate possession of her half share in the suit schedule properties. However during the pendency of the suit without knowledge of the plaintiff, the first defendant and defendant No.8 to 10 have illegally sold 0.22.08 guntas and 0.03.08 guntas of land in item No.1 and item No.5 respectively in favour of defendant No.7 through Registered Sale Deed dated 04.04.2009 and the same is not binding on her share. She

further contends that earlier she had filed impleading application to bring defendant No.7 on record, which was allowed by the court, but by oversight she has not filed application U/o 6 Rule 17 to amend the plaint and prayer column which is just and necessary for determining the question in controversy hence, prays to allow the application.

4. On the other hand, denying the contentions taken by the plaintiff in the affidavit, the defendants in their objection to the application filed by the plaintiff contend that, application filed by the plaintiff does not satisfy any of the ingredient under order 6 Rule 17 and the same is not maintainable. They further contend that, the present application is filed by the plaintiff at the stage when the matter is posted for further plaintiff evidence, just to drag on the proceedings and to give unnecessary trouble and harassment to the defendants. They also contend that, if the present application is allowed they will be put to much hardship and injustice and as per the provisions of order 6 Rule 17 after the commencement of evidence no amendment shall be carried out, the present application is filed by the plaintiff after the completion of evidence of plaintiff. Further, they also alleged that plaintiff is the stranger to the family of defendants and she is not joint family member and has

no rights or title or interest over the suit schedule properties.
Hence, prays to reject the application.

5. Heard and Perused material placed on record.

6. Now the points 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?

7. My answer to the above points as follows.

Point No.1: In the Affirmatively

Point No.2: As for the final order

for the following;

REASONS

8. **Point No.1:** The present suit is filed by the plaintiff against the defendants seeking the relief of partition and separate possession of her half share in all suit schedule

properties. It is a notable fact that, the present application is filed when the case is posted for further plaintiff evidence, on the ground that during pendency of the suit without her knowledge defendant No.1 and defendant No.8 to 10 have illegally sold some portions in Item No.1 and 5 in favour of defendant No.7 and that she has got impleaded defendant No.7 as one of the defendants but by oversight could not make an amendment in the plaint and prayer column regarding the alleged transaction which took place between defendant No.7 and defendant No.1, 8 to 10. On the other hand, objecting to the said application defendants contended that the application filed by the plaintiff does not satisfy any of the ingredients of order 6 rule 17, as the present application is filed when the case is at the stage of further evidence of plaintiff, hence after the evidence has commenced no amendment shall be carried out. So also, the defendants contend that plaintiff is a stranger to the family of defendants and she is not a joint family member and has no rights over the suit schedule properties. Hence, prays to reject the said application.

9. At this point of time it is a notable fact that, the present amendment sought by the plaintiff is of the nature which will not introduce any new facts to the case nor the new relief nor it

will in any way change the nature of the suit because the proposed amendment is only with respect to making some additions in the plaint and prayer column based on the application filed to implead defendant No.7 in whose favour some portions in Item No.1 and 5 have been sold, which are allegedly joint family properties. Further, it is also notable at this point of time, that objection taken by defendants as to the fact that as the amendment application is filed after the commencement of evidence, question of considering the proposed amendment does not arise at all is concerned, it is relevant to take note of point that, 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 them to add proposed amendment at trail stage it does not change the fundamental character of the suit. 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 defendant to file additional written

statement and to lead rebuttal evidence so far as proposed amendment is concerned. So far as other objections taken by defendants as to the relationship of the plaintiff and defendants is concerned same cannot be considered at this point of time. Whether the plaintiff is stranger to the family of defendants, whether she is a member of joint family, whether she has any right over suit schedule properties are all questions the answer to the same requires full fledged trial. 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 and the very purpose of allowing impleading application to bring defendant No.7 on record will loose its ground. Hence, I answer **Point No.1 in the Affirmative.**

10. **Point No.2:** Hence, I proceed to pass following :

ORDER

I.A No.XII filed under Order VI Rule 17
R/w Sec.151 of CPC by the plaintiff is hereby
allowed on cost of Rs.200/-.

Plaintiff 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 27th day of October, 2022)

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