

KARN320002522010



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 12th day of March 2025

O.S. No.56/2010

Plaintiff : Smt. Shivamma

(By Sri. R.M.C.G., Adv.)

//Vs.//

Defendants : Smt. Ningamma
@ Puttathayamma and others

(By Sri. M.G., Adv.)

I.A No.9

Plaintiff :

Applicant : Smt. Shivamma

-V/S-

Defendants:

Opponents :

Smt. Ningamma
@ Puttathayamma and others

**ORDER ON I.A No.9 UNDER ORDER VI RULE 17 R/w SEC.
151 OF CPC FILED BY THE PLAINTIFF**

The present application is filed by the applicant/plaintiff under order VI Rule 17 Read with 151 of the Civil Procedure Code to permit her to amend the plaint in the interest of justice.

2. In the application the plaintiff has sought permission to add para No.13 after para No.12. In the affidavit accompanying the application, the plaintiff states that, herself and defendant No.2, 4 are the children of defendant No.1 and defendant No.3 is the son of defendant No.2 and all of them are in joint possession and enjoyment of the suit schedule property without any partition. However, during the pendency of this suit the defendant No.5 has allegedly sold the agricultural land measuring 4 acres 17 guntas in Sy. No.11/2 of Gerahalli village i.e., suit schedule property in favour of defendant No.6 through registered sale deed dated 12.09.2012 but the said property is the ancestral joint family property of the plaintiff and defendant No.1 to 4 but without their consent and in violation of due process of law defendant No.5 deliberately and with oblique motive to harass the plaintiff from getting her due and legitimate share in the suit property has got

created and concocted the katha and revenue entries in his name and sold it in favour of defendant No.6 and the said registered sale deed is illegal, invalid and is not binding on the plaintiff but defendant No.6 in collusion with defendant No.5 without giving notice to plaintiff illegally got katha transferred in her name even though possession is with plaintiff and as the said sale took place during the pendency of suit it is invalid and hence, prays to allow the application.

3. On the other hand, defendant No.1 to 4 counsel submitted he has no objection to allow the application. On the other hand, the defendant No.6 counsel has filed objection to the said application and in his objection he contends that, application filed by the plaintiff is not helpful in deciding the issue involved in this case and is filed just with an intention to drag on the proceedings, at belated stage when the matter is posted for arguments. He also states that, defendant No.6 purchased the suit schedule property after verifying all the documents and the marketable title of the defendant No.5 and the plaintiff is well aware about the purchase of the suit schedule property by defendant No.6 and he was also aware that prior to sale of suit property made in favour of defendant No.6 , the said property was sold in favour of defendant No.1 and the

defendant No.1 gifted the property to her grand son i.e., defendant No.3 and he sold it to defendant No.5. hence, the claim of the plaintiff is barred by limitation but inspite of knowing all those facts plaintiff has filed the present application as a correction measure and if the application is allowed defendant No.6 will be put to greater hardship and injury. Hence, prays to reject the application.

4. Heard and Perused 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 against the defendants seeking the relief of partition and

separate possession of her share in the suit schedule property, when the case is at the stage of argument, plaintiff has filed the present application seeking permission to amend the plaint and to add para No.13 after para No.12, on the ground that during the pendency of the suit defendant No.5 has sold suit schedule property in favour of defendant No.6 but herself and defendant No.2, 4 are the children of defendant No.1 and defendant No.3 is the son of defendant No.2 and all of them are in joint possession and enjoyment of the suit schedule property without any partition. However, during the pendency of this suit the defendant No.5 has allegedly sold the agricultural land measuring 4 acres 17 guntas in Sy. No.11/2 of Gerahalli village i.e., suit schedule property in favour of defendant No.6 through registered sale deed dated 12.09.2012 but the said property is the ancestral joint family property of the plaintiff and defendant No.1 to 4 but without their consent and in violation of due process of law defendant No.5 deliberately and with oblique motive to harass the plaintiff from getting her due and legitimate share in the suit property has got created and concocted the katha and revenue entries in his name and sold it in favour of defendant No.6 and the said registered sale deed is illegal,

invalid and is not binding on the plaintiff but defendant No.6 in collusion with defendant No.5 without giving notice to plaintiff illegally got katha transferred in her name even though possession is with plaintiff and as the said sale took place during the pendency of suit is invalid and hence, prays to allow the application.

8. On the other hand, defendant No.6 in his objection contends that, application filed by the plaintiff is not helpful in deciding the issue involved in this case and is filed just with an intention to drag on the proceedings, at belated stage when the matter is posted for arguments. He also states that, defendant No.6 purchased the suit schedule property after verifying all the documents and the marketable title of the defendant No.5 and the plaintiff is well aware about the purchase of the suit schedule property by defendant No.6 and he was also aware that prior to sale of suit property made in favour of defendant No.6 , the said property was sold in favour of defendant No.1 and the defendant No.1 gifted the property to her grand son i.e., defendant No.3 and he sold it to defendant No.5. hence, the claim of the plaintiff is barred by limitation but inspite of knowing all those facts plaintiff has filed the present application as a correction measure and if the application is

allowed defendant No.6 will be put to greater hardship and injury. Hence, prays to reject the application.

9. Now the amendment which plaintiff is seeking is only with respect to sale of suit schedule property which has taken place in favour of defendant No.6 by defendant No.5 during pendency of the suit on the above stated grounds. Here it is a notable fact that, during the pendency of the suit plaintiff by way of amendment to the plaint cause title got defendant No.6 impleaded as a party to the suit on the ground that she has purchased the suit schedule property from defendant No.5 and defendant No.6 has appeared before court and filed her written statement and also led her evidence and now when the case is at the stage of argument, it came to the knowledge of plaintiff that even though defendant No.6 was got impleaded as a proper party to the suit but in the body of the plaint no facts are pleaded regarding the reason why she got impleaded in the suit. Hence has sought permission to state the facts regarding the same by way of amendment. The facts which plaintiff wants to insert by way of amendment will not introduce any new facts because the proposed amendments are not in the nature of changing the relief sought and are based only on subsequent impleading of

defendant No.6 in suit which took place during the pendency of the suit based on sale transaction which took place with respect to suit property. Even the issue is framed regarding the fact whether defendant No.6 is a bonafide purchaser and evidence is also led on it. Hence allowing of application will not cause any prejudice to defendant No.6 . The merits of the proposed facts cannot be looked into by the court at this stage while deciding the application for amendment. The proposed amendment is only an addition to facts already stated and explanatory in nature. Proposed amendment will not introduce any new facts but will help the court in proper and complete adjudication of the matter before it.

10. 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 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 defendant No.6 because as against the proposed amendment it is always open for the defendant No.6 to file additional written statement and to lead rebuttal evidence. Further, so far as objections taken by defendant No.6 is concerned stated above, the same cannot be considered at this stage, the finding on same needs complete 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 also it is a notable fact that, even though defendant No.6 was made impleaded as no pleadings were made regarding why she was impleaded, that would lead to incomplete pleadings and if the application is allowed then it would help to comprehensively decide all the question relating to rights of the parties in the suit schedule property in one suit and would avoid multiplicity of proceedings. Hence, I answer **Point No.1 in the Affirmative.**

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

ORDER

I.A No.9 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 directly on computer, then corrected and pronounced by me in the Open Court on this **12th day of March 2025**)

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