

KARN320005532014



Presented on : 26-03-2014

Registered on : 26-03-2014

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,**  
**KANAKAPURA**

Present: Smt. Radha S, B.A., LL.M.,  
Prl. Civil Judge & JMFC.,  
Kanakapura.

**Dated this the 09<sup>th</sup> day of December 2025**

**O.S./160/2014**

Plaintiff/s :- 1. Smt. Thayimuddamma  
D/o late Ramaiah  
Aged about 58 years,  
R/o: Behind Garage,  
Pipeline Road,  
Kanakapura Town.

2. Smt. Thayamma  
D/o late Ramaiah  
Aged about 51 years,  
R/o: Kaggalahalli Village,  
Harohalli Hobli,  
Kanakapura Taluk.

**3. Smt. Laskhmamma**  
**D/o late Ramaiah**  
**Since dead by her LR's**

a) Smt. Jyothi  
W/o Mahalingaiah  
D/o late Lakshamma  
Aged about 39 years,



R/o: Kaggalahalli Village,  
Harohalli Hobli,  
Harohalli Taluk,  
Ramanagara District.

**(By Sri. M.G., Advocate)**

.Vs.

- Defendant/s:-
1. Sri. Erappa @ Eregowda  
S/o late Ramaiah  
Aged about 55 years,
  2. Sri. Shivananjappa  
S/o late Ramaiah  
Aged about 53 years,
  3. Sri. Ramanna  
S/o late Ramaiah  
Aged about 49 years,
  4. Sri. Nanjundappa  
S/o late Ramaiah  
Aged about 47 years,
  5. Sri. Kumar  
S/o Eregowda @ Erappa  
Aged about 34 years,
  6. Sri. Muniraju  
S/o Eregowda @ Erappa  
Aged about 32 years,
  7. Sri. Ravi  
S/o Eregowda @ Erappa  
Aged about 31 years,



8. Sri. Shivaraju  
S/o Shivananjappa  
Aged about 31 years,
9. Smt. Vasantha  
S/o Shivananjappa  
Aged about 29 years,  
R/o: Hunasanahalli Village,  
Kodihalli Hobli,  
Kanakapura Taluk.
10. Smt. Saraswathi  
D/o late Ramanna  
Aged about 31 years,
11. Sri. Suresh  
S/o late Ramanna  
Aged about 29 years,
12. Sri. Nandish  
S/o Nanjundappa  
Aged about 30 years,
13. Sri. Jagadish  
S/o Nanjundappa  
Aged about 28 years,  
  
D1 to D8 & D10 to  
D13 are R/o:  
Kaggalahalli Village & Post,  
Harohalli Hobli,  
Kanakapura Taluk.
14. Smt. T.Jnanamba  
W/o M.Ramu @  
Venkateswara Reddy  
Aged about 84 years,  
R/o: No.10, John



Armstrong Road,  
Richmond Town,  
Bangalore-560005.

15. Sri. Syed Mateen Aga  
S/o Syed Imtiyaz Aga  
Aged about 72 years,  
President, The Bangalore  
Mango Wholesale  
Traders Association,  
Office No.A1, APMC,  
Sub Market Yard,  
Singena Agrahara,  
Bangalore-100.
16. Sri. M.Riyaz Ahamed  
S/o Babu Saheb  
Aged about 70 years,  
Vice President, The Bangalore  
Mango Wholesale  
Traders Association,  
Office No.A1, APMC,  
Sub Market Yard,  
Singena Agrahara,  
Bangalore-100.
17. Sri. M.Mubark Pasha  
S/o N.Mohammed Ali  
Aged about 57 years,  
Secretary, The Bangalore  
Mango Wholesale  
Traders Association,  
Office No.A1, APMC,  
Sub Market Yard,  
Singena Agrahara,  
Bangalore-100.

**(By Sri. S.S.M., Adv., for D15  
to D17, Ex-Parte for D1 to D13)**



**PARTIES TO IA No.IX**

Applicants / plaintiffs: Smt. Jyothi  
LR3(a) of plaintiff

Vs.

Opponents / defendants : Sri. Erappa @ Eregowda  
and Others

(Smt. Radha.S)  
Prl. Civil Judge & JMFC.,  
Kanakapura.

**ORDERS ON I.A. NO.9**

This is an application filed by the plaintiffs Under Order VI Rule 17 R/w Section 151 of CPC with a prayer to amend the plaint by incorporating some facts in para No.3 of the plaint and to add additional prayer at prayer column of the plaint as prayed in the application.

**2.** This application is supported by the affidavit of the plaintiff No.3(a), wherein she deposed that the present suit is filed by them against the defendants for the relief of partition and separate possession in respect of suit schedule properties. During the pendency of the suit, the defendant No.14 has sold the suit schedule properties in favour of defendant Nos.15 to 17 under the registered sale deed dated 26-04-2014. The defendant No.14 is not having



exclusive right on the suit schedule properties to sell the same in favour of the defendant No.15 to 17. As such, the sale deed executed by the defendant No.14 in favour of defendant No.15 to 17 in respect of the suit schedule properties is not binding on the plaintiffs. Under such circumstances, in order to avoid further technical issues it is just and necessary for the plaintiffs to seek the reliefs of declaration of said sale deed as not binding on them and to add facts with regard to said prayer is very much necessary for the plaintiffs. Hence it is very much necessary to amended the plaint to avoid the technicalities, otherwise the plaintiffs will be put into irreparable loss and injury. The proposed amendment will never affect the defense of the defendants as such, it is just and necessary to decide the controversies between the parties, the present amendment is necessary. On all these grounds, the plaintiffs sought for allowing the application.

**3.** Per contra, the defendant Nos.15 to 17 have filed their objections to the present application. Wherein the defendants have denied the entire contents of application and affidavit as well and reiterated the defence taken in their written statement. It is the specific objection of the defendant Nos.15 to 17 that the defendant No.14 is being the absolute owner of the suit schedule properties has sold the same to the defendant Nos.15 to 17. The plaintiffs are



no way concerned to the suit schedule properties even though in order to get wrongful gain and harass the defendants Nos.14 to 17 have filed this false and frivolous suit. As such the present application is not maintainable at this stage and liable to be dismissed.

**4.** Heard the arguments of the learned counsel for plaintiffs at length in great detail and the learned counsel for the defendant Nos.15 to 17 has filed written arguments. Scrutinized the records of the case.

**5.** On scrutiny of records of the case and having heard arguments/perusal of written arguments, the following points would arise for consideration of this court:

1. Whether applicants/plaintiffs have made out sufficient grounds for granting leave to the plaintiffs to amend the plaint as sought for?

2. What order?

**6.** My findings to the above points as under:

Point No.1 : In the Affirmative.

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

### **REASONS**

**7. REASONING ON POINT NO.1:-** The present suit is filed by the plaintiffs for partition and separate possession in



respect of suit schedule properties. When the case was posted for further chief examination of PW1, the plaintiffs have come up with this application. It is pertinent to note that, in the present case on hand the plaintiffs side evidence is not yet completed. Under such circumstances, let me examine whether plaintiffs are entitled to amend the plaint at this juncture. In this context it is necessary to know the object of amendment brought to Code of Civil Procedure, 1908 in the year 2002, Order VI Rule 17 of Code of Civil Procedure puts an embargo on the power of the court to grant leave to parties to amend the pleadings at any stage of the proceedings. The said provision introduces the rider that once trial has commenced, unless the party who wants to amend his/her/their pleadings, has to demonstrate that, in spite of exercising due diligence, application for amendment could not be filed at the earliest possibility opportunity, then only application can be entertained.

**8.** In order to decide the controversy between the parties, it is necessary to refer the provision governing amendment of pleadings.

Order VI Rule 17 of Code of Civil Procedure, 1908 deals with the amendment of pleadings, which reads thus:



**“17. Amendment of pleadings-  
The Court may at any stage of  
the proceedings allow either  
party to alter or amend his  
pleadings in such manner and  
so such terms as may be just,  
and all such amendments  
shall be made as may be  
necessary for the purpose of  
determining the real  
questions in controversy  
between the parties.**

**Provided that no application  
for amendment shall be  
allowed after the trial has  
commenced, unless the court  
comes to the conclusion that  
in spite of due diligence, the  
party could not have raised  
the matter before the  
commencement of trial.”**

**9.** It is well settled law that criterion to decide the application for amendment of pleadings be subject to certain conditions namely:

**1.When the nature of it  
change by permitting  
amendment;**

**2.When amendment would  
result in introducing new  
cause of action and  
intending to prejudice  
other party;**



**3. When allowing amendment application, defeats law of limitation.**

**10.** Some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment. Whether the amendment sought is imperative for proper and effective adjudication of the case; whether the application for amendment is bona-fide or mala-fide; the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; refusing amendment would in fact lead to injustice or lead to multiple litigation; whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 rule 17. These are only illustrative and not exhaustive. On having glance over above referred provision of law, it becomes clear that, the court can grant leave to parties to amend their pleadings at any stage of proceedings. This power is subject to condition that, once trial has begun, unless party seeking amendment of the pleadings establishes that, in spite of exercising due



diligence, he could not file application for amendment prior to commencement of trial, then said provision puts an embargo on the fetters of the court to grant leave for amendment of pleadings. The present application is to be considered in the light of the statutory mandate contained under Order VI Rule 17 of Code of Civil Procedure, 1908.

**11.** Adverting to the factual score of the present case, the prayer which is tried to be inserted by plaintiffs, is nothing but continuation of existing claim/prayers in the plaint as stands today. It is the specific contention of the plaintiffs that during the pendency of the suit the defendant No.14 has sold the suit schedule properties to the defendant Nos.15 to 17 under the registered sale deed. As such it is just and necessary for the plaintiffs to seek the relief of declaration in respect of said sale deed. Hence it is just and necessary for the plaintiffs to seek the relief of declaration to avoid further controversies between the parties. **In a civil suit as per Order 2 Rule 2 of the Code of Civil Procedure mandates that every suit should include the whole claim.** For more convenience it is necessary to narrate Under Order 2 Rule 2 of CPC as under:

**Under Order 2 Rule 2. Suit to include the whole claim:**

**Under Order 2 Rule 2(1):-  
Every suit shall include the**



**whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.**

The object of Order 2 Rule 2 of the Code is two-fold. First is to ensure that no defendants are sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiffs from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiffs who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action. Under such circumstances, the proposed amendment is necessary for the plaintiffs to get all remedies in one suit and also to avoid further litigation between the parties and more over the same will not cause any prejudice to the defendants as they are not at all surprised with the proposed amendment. Moreover the defendant Nos.15 to 17 have also admitted the execution of registered sale deed in their favour by the defendant No.14. The nature of the suit will not be changed by virtue of proposed amendment. However, the plaintiffs through the proposed amendment intends to add prayer in



the plaint in continuation to the existing claim/prayers. Since the plaintiffs have approached the court with some relieves as such, it is on the plaintiffs to plead and prove about the pleadings on which they are claiming the relieves.

**12.** Regarding the defence taken by the defendant Nos.15 to 17 with regard to exclusive right of the defendant No.14 on the suit schedule properties can not be decided at this stage as the same can be decided after full pledged trial. In this regard the both parties will get opportunities to lead their evidence. I have perused the averments of the plaint, application and objection. While allowing this application, no harm or injury would be caused to the defendants if present application is allowed and it will not amount to retraction of any admissions. More over the defendants will get every opportunities to cross examine the plaintiffs with regard to the amended portion as well as in the present suit evidence is not yet completed. Under such circumstances, the proposed amendment will not cause any prejudice to the defendants as they will get every chance to cross examine the plaintiffs in this regard as well. The nature of the suit will not be changed by virtue of proposed amendment. Hence, viewed from this angle, plaintiffs have made out grounds for allowing the present application. To avoid the further controversies between the parties and multiplicity of proceedings it is necessary for the plaintiffs



to add facts and to add prayer in the plaint as prayed in the application. With these observations, this court answers the point No.1 in the affirmative.

**13. REASONING ON POINT NO.2:-** For the reasons stated above, this court proceeds to pass the following:

**ORDER**

I.A No.9 filed by the plaintiffs  
Under Order VI Rule 17 R/w Section  
151 of Code of Civil Procedure, 1908  
is hereby allowed on cost of  
Rs.700/-.

The applicants/Plaintiffs are  
permitted to amend the plaint as  
sought in the application and shall  
furnish the amended plaint.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on **09<sup>th</sup> day of December 2025.**)

(Smt. Radha.S)  
Prl. Civil Judge & JMFC.,  
Kanakapura.