

KARN320020192011



Presented on : 29-11-2011

Registered on : 29-11-2011

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
KANAKAPURA

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

Dated this the 09th day of January 2025

O.S./358/2011

- Plaintiff/s :- 1. Sri. R. Rajashekaraiah
S/o late Revanna
Aged about 59 years,
2. Sri. Y.R.Sathishkumar
S/o R.Rajashekaraiah
Aged about 30 years,

Both are R/at:
Yeramgere Village,
Kodihalli Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. V.D.G., Advocate)

.Vs.

- Defendant/s:- 1. Sri. S.Suresha
S/o Shankararadhya
Aged about 45 years,
R/at: Yeramgere Village,

Kodihalli Hobli,
Kanakapura Taluk,
Ramanagara District.

2. Sri. B.Nataraju
S/o Bheerahegde,
Aged about 48 years,
R/at: Chikka Yeramgere Village,
Kodihalli Hobli,
Kanakapura Taluk,
Ramanagara District.

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

PARTIES TO IA No.V

Applicants / plaintiffs: Sri. Rajashekaraiah
and Another

Vs.

Opponents / defendants : Sri. S.Suresha
and Another

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

ORDERS ON I.A. NO.5

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 para No.4(a) after the para No.4 in the plaint and to add additional prayers at prayer column of the plaint as prayed in the application.

2. This application is supported by the affidavit of the plaintiff No.1, wherein he deposed that the present suit is filed by him against the defendants for the relief of declaration, partition and separate possession in respect of suit schedule property. During the pendency of the suit the defendant No.1 has sold 1 acre of land in suit schedule property in favour of defendant No.2 under the registered sale deed dated 03-11-2010. The defendant No.1 is not having exclusive right on the suit schedule property to sell the same in favour of the defendant No.2. As such, the sale deed executed by the defendant No.1 in favour of defendant No.2 in respect of portion of the suit schedule property is not binding on the plaintiffs. Further the plaintiff No.1 deposed that there is PWD road between Kodihalli to Hunasanahalli, in crossing of the said road, the cart road leading from Sy.No.82/1, Sy.No.82/2, Sy.No.82/3, Sy.No.82/4, Sy.No.81/5, Sy.No.81/3 and Sy.No.81/4, the plaintiffs are using the said cart road to reach his land bearing Sy.No. 81/3 and Sy.No.81/4, but the defendant No.2 and his henchmen have illegally trying to obstruct the plaintiffs to reach their lands. By the intervention of the plaintiffs and well-wishers in the locality, the defendant No.2 and his henchmen have not succeed in their illegal acts. The plaintiffs have also requested the defendant No.2 not to do such illegal acts but he has not cared the requests of the plaintiffs. Except the said cart road, there is no other way to the plaintiffs to reach their lands. 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 null and void and to add paras with regard to said prayers is very much necessary for the plaintiffs. Hence it is very much necessary to amend 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 defendants have filed their objections to the present application. Wherein the defendants have denied the entire contents of application and affidavit as well. It is the specific objection of the defendants that there is no PWD road available between Kodihalli to Hunasanahalli Village and it will not cross or pass through the alleged survey numbers. In order to make out a ground for seeking a road to reach their lands, the plaintiffs have filed the present application which is not at all maintainable under law. There are no documents being produced by the plaintiffs to establish the existence of said road as alleged by the plaintiffs. The plaintiffs only in order to harass the defendant No.2 from enjoying his 1 acre of land has filed this false suit to obstruct the defendant. The plaintiffs have

also filed O.S.No.21/2001 seeking the similar relief and the said suit is also pending. The defendant No.1 is being a holder of 1 acre of land in suit schedule property has sold in favour of the defendant No.2. The plaintiffs are well aware of these facts even though have come up with this false and frivolous application. As such the present application is not maintainable at this stage and liable to be dismissed.

4. Heard the arguments of the learned counsels for plaintiffs and defendants at length in great detail. Scrutinized the records of the case.

5. On scrutiny of records of the case and having heard 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 Partly 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 declaration, partition and separate

possession in respect of suit schedule property. When the case was posted for plaintiffs evidence, 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 commenced. 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 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 prayers which are 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.1 has sold some portion of the suit schedule property to the defendant No.2 under the registered sale deed and on the basis of the said sale deed the defendant No.2 is obstructing him from using the cart to road. As such it is just and necessary for the plaintiffs to seek the relief of declaration in respect of said sale deed and restrain the defendant No.2 from obstructing the plaintiffs from using the said cart road. As such 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. The nature of the suit will not be changed by virtue of proposed amendment. However, the plaintiffs through the proposed amendment intends to add prayers 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. Further it is pertinent to note that, the prayer No.(c) sought under the

application is already available in the plaint as prayer No.(b) as such it is not necessary to add the very same prayer through the present amendment. Hence this court declines to allow the present application in entirety.

12. Regarding the defence taken by the defendants, possession of the parties and right of the parties over the suit schedule property 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 commenced. 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 case will not be changed by virtue of proposed amendment. Hence, viewed from this angle, plaintiffs have made out grounds for allowing the present application in part. To avoid the further controversies between the parties and multiplicity of proceedings it is necessary for the plaintiffs to add paras and to add prayer in the plaint as

prayed in the application. With these observations, this court answers the point No.1 in the partly affirmative.

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

ORDER

I.A No.5 filed by the plaintiffs
Under Order VI Rule 17 R/w Section
151 of Code of Civil Procedure, 1908
is hereby partly allowed on cost of
Rs.300/-.

The prayer of the plaintiffs with
regard to adding of prayer No.(c) with
regard to the relief of declaration of
registered sale deed dated 03-11-
2010 as not binding on the plaintiffs
is hereby dismissed.

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 **09th day of January 2024.**)

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