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Presented on : 03-06-2022  
Registered on : 03-06-2022

**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 08<sup>th</sup> day of September 2025**

**O.S./175/2022**

Plaintiff/s :- Sri. Raju Naika  
S/o late Sakriya Naika,  
Aged about 63 years,  
R/o: Lokanayakana Thandya,  
Thattekere Village,  
Maralawadi Hobli,  
Kanakapura Taluk,  
Ramanagara District.

**(By Sri. S.T.S., Advocate)**

.Vs.

Defendant/s:- 1. Sri. R.Ravikumar  
S/o late T.N.Rudraradhya  
Aged about 68 years,  
2. Sri. R.Nagesh  
S/o late T.N.Rudraradhya  
Aged about 70 years,

Both are R/at: No.1,  
Lakshmi Road,  
In between 1 & 2<sup>nd</sup> Cross,



Shanthinagar,  
Wilson Garden,  
Bangalore-560027.

3. Sri. Shivanaiah  
S/o Doddaputtegowda  
Aged about 48 years,  
R/o: Thattekere Village,  
Maralawadi Hobli,  
Kanakapura Taluk,  
Ramanagara District.

**(By Sri. M.P., Adv., for D1  
Sri. A.B.S., Adv., for D2  
Ex-Parte for D3)**

**PARTIES TO IA No.III**

Applicant / plaintiff: Sri. Raju Naika

Vs.

Opponents / defendants : Sri. R.Ravikumar  
and Others

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

**ORDERS ON I.A.NO.3**

This is an application filed by the plaintiff Under Order VI Rule 17 R/w Section 151 of CPC with a prayer to permit the plaintiff to amend the plaint by incorporating additional



prayer at prayer column of the plaint as prayed in the application.

**2.** This application is supported by the affidavit of the plaintiff, wherein he deposed that the present suit is filed by him against the defendants for the relief of permanent injunction in respect of suit schedule property. It is stated by the plaintiff that the father of the defendants had sold the suit schedule property in favour of the plaintiff's father viz Sakriya Naika under the sale deed dated 31-12-1981 (Fragmentation Act was in force) and he handed over the possession of the suit schedule property in favour of plaintiff's father. Since the day of purchase, the father of the plaintiff was in possession and enjoyment of the suit schedule property. After the death of his father, the plaintiff has constructed a residential house in the suit schedule property and he is residing in the said house along with his family members. The defendants are not having any manner of right and possession on the suit schedule property even though they have interfered into the peaceful possession and enjoyment of the plaintiff in respect of the suit schedule property. Hence in order to stop the defendants from such illegal acts, the plaintiff has filed this suit for permanent injunction. During the pendency of the suit, the defendants are openly proclaiming in the locality that they are denying the right of the plaintiff on the suit schedule property and



they will dispossess him from the suit schedule property. Hence it is just and necessary for the plaintiff to seek the relief of declaration of title on the suit schedule property. Under such circumstances, in order to avoid further technical issues it is just and necessary for the plaintiff to seek the relief of declaration in this suit. 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 plaintiff sought for allowing the application.

**3.** Per contra, the defendant No.2 has filed his objections to the present application. Wherein the defendant No.2 has denied the entire contents of application and affidavit as well. It is the specific objection of the defendant No.2 that the land bearing Sy.No.10/1 measuring 37 guntas situated at Tattkere Village, Maralawadi Hobli, Harohalli Taluk was the ancestral property of his father. The defendant No.1 had filed a suit under O.S.No.8177/1996 before the Hon'ble City Civil Court, Bangalore. Subsequently the defendant No.2 had also filed a suit against the defendant No.1 under O.S.No.1576/2002 before the Hon'ble 1<sup>st</sup> Additional City Civil and Sessions Judge, Bangalore. A common Judgment was passed in the above mentioned cases. On the basis of



the Judgment and Decree passed in those cases, the defendant No.2 has filed a petition seeking for final decree under FDP No.60/2010. In the said FDP proceedings, the suit schedule property is allotted to the defendant No.2 as his share. The final decree passed in FDP No.60/2010 is also registered on 31-12-2012. As per the final decree, the katha pertaining to the suit schedule property is also transferred in the name of the defendant No.2 as per M.R.No.T6/2022-2023. The suit schedule property was not been alienated in favour of any person or plaintiff's father. The father of the defendants never executed an unregistered sale deed dated 31-12-1981 in favour of the plaintiff's father. The suit schedule property was the ancestral property of the defendants, as such their father have no exclusive right on the same to sell the same to others. The plaintiff is not having valid title on the suit schedule property as such, the suit of the plaintiff is not maintainable. In the present case, issues are already framed as such the present application is not maintainable at this stage. The plaintiff is well aware of these facts since beginning even though he has not made any efforts to file such application at earliest stage. Hence the present application is not maintainable and liable to be dismissed. On these grounds the defendant No.2 prayed to dismiss the application.



4. Heard the arguments of the learned counsels for plaintiff and defendants at length in great detail On I.A.No.3. 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 applicant/plaintiff has made out sufficient grounds for granting leave to the plaintiff 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 plaintiff for permanent injunction in respect of suit schedule property. When the case was posted for arguments on preliminary issue, the plaintiff has come up with this application. It is pertinent to note that, in the present case on hand the plaintiff's side evidence is not yet commenced. Under such circumstances, let me examine whether plaintiff is 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 prayer which is tried to be inserted by plaintiff, is nothing but continuation of existing claim/prayer in the plaint as stands today. It is the specific contention of the plaintiff that during the pendency of the suit, the defendants are proclaiming that they will dispossess the plaintiff from the suit schedule property by denying his title. As such it is just and necessary for the plaintiff to seek the relief of declaration of his title in respect of the suit schedule property 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 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 defendant is sued and vexed twice in



regard to the same cause of action. Second is to prevent a plaintiff 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 plaintiff 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 plaintiff 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 plaintiff through the proposed amendment intends to add a prayer in the plaint in continuation to the existing claim/prayer. Since the plaintiff has approached the court with some relieves as such, it is on the plaintiff to plead and prove about the pleadings on which he is claiming the relieves.

**12.** Regarding the defence taken by the defendant No.2 with regard to his exclusive right and possession 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 and cross examine the opposite parties. 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 and it will not amount to retraction of any admissions. More over the defendants will get every opportunities to cross examine the plaintiff with regard to the amended portion as well as the evidence of the plaintiff is not yet commenced or 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 plaintiff in this regard as well. The nature of the case will not be changed by virtue of proposed amendment. Hence, viewed from this angle, plaintiff has 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 plaintiff 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.3 filed by the plaintiff  
Under Order VI Rule 17 of Code of



Civil Procedure, 1908 is hereby allowed on cost of Rs.200/-.

The applicant/Plaintiff is 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 **08<sup>th</sup> day of September 2025.**)

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