

KARN410001412015



**IN THE COURT OF THE ADDL. SR. CIVIL JUDGE & J.M.F.C., AT:
MAGADI.**

OS.No.60/2015

Present: Sri. Hanumanth Satwik.,
LL.M,
Addl. Sr. Civil Judge & JMFC., Magadi.

DATED: THIS THE 15th DAY OF NOVEMBER 2021

Plaintiff :- Sri. Chikkachennaiah,
S/o. Late. Kempanarasaiah,
Aged about 61 years,
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

(By Sri. **J.K.R.**, Advocate)

--V/s--

Defendants :- 1 Sri. Doddachannaiah,
S/o late Kempanarasaiah,
Aged about 64 years,
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

2. Smt. Ganganarasamma,
W/o. Late. Gangadharaiah,
Aged about 59 years.

3. Sri. Shivaramu,
Since dead by his L.Rs.,

(a) Nagarathnamma,
W/o. Late. Shivaramu,

Aged about 47 years,

(b) Pramoda,
S/o. Late. Shivaramu,
Aged about 24 years.

(c) Vinoda,
S/o. Late. Shivaramu,
Aged about 21 years,

(d) Chandana,
D/o. Late. Shivaramu,
Aged about 18 years,

D2 and D(a to d) are
R/at: Rajivgandhinagar,
1st Main Road, Nyanabharathi,
Ward No.129, Govindarajnagar,
Opp. Chamundeshwari Temple,
Bangalore – 91.

4. Maranna,
S/o. Late. Kempanarasaiah,
Aged about 54 years.
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

5. Sri. Ganganna,
Since dead by his L.Rs.,

(a) Smt. Bhagyamma,
Since dead by her L.Rs.,

(a)(1) Sri. Shashi,
S/o. Marigowda,
Aged about 26 years,

(a)(2) Suman,
D/o. Marigowda,
Aged about 24 years,

(a)(3) Chethan,
S/o. Marigowda,
Aged about 22 years,

6. Sri. Chandrashekhar,
Since dead by his L.Rs.,

(a) Smt. Sunanda,
W/o. Late. Chandrashekhar,
Aged about 42 years,

(b) Sri. Manoj,
S/o. Late. Chandrashekhar,
Aged about 18 years,

(c) Vinutha,
S/o. Late. Chandrashekhar,
Aged about 15 years,

D5(A)(1) to 5(A)(3) and D6(A) to D6(c)
are R/at: No.104, 1st Cross, Kottigepalya,
Magadi Main Road,
Bangalore – 91.

7. Smt. Manjula,
W/o. Mangalesh,
Aged about 32 years,
R/at: No.54, 8th Cross,
Magadi Main Road,
Kottigepalya, Bangalore – 99.

8. Sri. Kempanna,
Since dead by his L.Rs.,

(a) Smt. Laxmamma,
W/o. Late. Kempanna,
Aged about 68 years,

(b) Smt. K. Umadevi,
D/o. Late. Kempanna,
W/o. Jayanna,
Aged about 45 years,

(c) Sri. K. Chandrashekhar,
S/o. Late. Kempanna,
Aged about 43 years,

(d) Sri. K. Maregowda @ Shashi,

S/o. Late. Kempanna,
Aged about 41 years,

(e) Smt. K. Nagarathna,
D/o. Late. Kempanna,
W/o. Ramakrishna,
Aged about 40 years.

D8(a to e) are R/at:
No.150/3, Laxmamma Building,
Sallapuradamma Extension,
2nd Cross, Sunkadakatte,
Bangalore – 91.

9. Smt. Renukamma,
W/o. Doddachannegowda,
Aged about 50 years,
R/at: Neralekere Village,
Thippasandra Hobli,
Magadi Taluk,
Ramanagara District.

(D1, 2, 3(a to d), D5(a1) & D9 by Sri. **R.S.**, Advocate)
(D6(a), 7, 8(a to c) are placed ExParte)

ORDER ON IA NO.VI

The present suit is for partition and separate possession.

2. The plaintiff filed the present application U/o. VI rule 17 of CPC seeking permission of this court to allow him to amend the plaint. The plaintiff submits that after filing the present suit the defendants informed him about the creation of illegal documents pertaining the suit schedule properties. He is not a party to the said documents. The properties involved in the documents pertains his ancestral properties. In this regard the plaintiff prays as above.

3. The defendants in the objections denied the application averments. The defendants contended that the mutation documents are public documents. The plaintiff not explained as to why he did not obtain the said documents before filing the suit. The present application is filed after the lapse of 6 years. There is a delay in filing the application. In this regard, the defendants pray to reject the application.

4. Heard counsel.

5. Considering the contentions of the parties, following points arise for my consideration.

1. *Whether the amendment sought for is necessary to determine the real question in controversy?*
2. *What order?*

6. My findings for the above points are as under.

Point No.1: In the affirmative,

Point No.2: As per final order.

For the following,

REASONS

POINT NO.1:-

7. The plaintiff has sought permission of this court to allow him to amend the plaint. In this regard, I have perused the amendment sought and I have

also perused the plaint. Considering the same, I am of the view that plaintiff intend to include additional relief with respect to gift deed dated:20.04.1982. The present suit is one for partition and separate possession. Considering, the questions that need to be answered in the present suit I am of the view that incorporation of the proposed amendment is necessary so as to determine real question in controversy.

8. Be it stated, on perusal of the application it appears that in spite of due diligence the plaintiff could not have raised the matter before the commencement of the trial. So also, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of6 justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that the objections of the defendants are of no avail to him. Even

otherwise the contentions of the defendants are the subject matter of evidence, which cannot be decided at this stage of the case.

9. The defendants contended that the present application is filed at a belated stage and hence the present application is not maintainable. Be it stated, it is settled principle of law that mere delay and laches in making the application, for amendment cannot be a ground to refuse the amendment. In this regard, I am supported by the decision of Hon'ble High Court of Karnataka between Sri. Omar Farook vs Sri. M. Varadaraju [W.P.No. 40713/2016 (GM-CPC)], wherein Hon'ble Court held as:

“It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise.”

In the case at hand for the reasons stated above it is held that the proposed amendment is necessary to determine the issues involved in the suit. In these circumstances, in view of the law laid down by the Hon'ble High Court I am of the view that this contention of the defendants holds no water.

10. On perusal of the proposed amendment it appears that the proposed amendment does not intend to bring new case, on the other hand the amendment proposes to make the suit comprehensive. The proposed amendment if brought on record the cause of action existing and the nature of the suit will remain unharmed. If the proposed amendment is allowed the nature of the suit will not be changed and the basic structure remains unharmed. Considering the questions that need to be determined in the present suit and in view of the purpose the proposed amendment intends to achieve, I am of the view that, the said amendment is necessary to be carried out to determine the real question in controversy.

11. It is to be noted that plaintiff has every right to put-forth his grievances and he is the master of his averments, this being the case if proposed amendment is not allowed to be carried out the plaintiff cannot put-forth her case effectively and completely and bring clarity in the facts alleged. Considering this, I am of the view that, opportunity should be accorded to the plaintiff to put-forth her case in its entirety by carrying the amendment.

12. Furthermore, if the proposed amendment is not allowed to be carried out the inconvenience which may be caused to the plaintiff is more than the inconvenience, which may be caused to the defendants if the same is allowed to be carried out. Further, if amendment is not allowed the injury

which may be sustained by the plaintiff cannot be compensated at any cost. On the other hand, the defendants will have an opportunity to contest the matter and get the same decided on merits.

13. Considering the pleadings, the application, the objection and the proposed amendment I am of the view that, in the interest of justice and equity it is necessary that the proposed amendment be incorporated in the plaint so as to determine real question in controversy and to make the suit comprehensive. In these circumstances, I decide point No.1 in the affirmative.

POINT NO.2:

14. In view of reasons on point No.1 and in the interest of justice and equity, I proceed to pass the following,

ORDER

IA No.VI U/o.VI Rule 17 r/w. Sec.151 of CPC

filed by the plaintiff is hereby allowed on cost of

Rs.400/-.

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **15th day of November 2021.**)

(Hanumanth Satwik)

**Addl. Sr. Civil Judge & JMFC.,
Magadi.**