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

OS.No.60/2015

**Present: Sri. Sandeep S. Reddy, B.A., LL.B.,
Addl. Sr. Civil Judge & JMFC., Magadi.**

DATED: THIS THE 13th DAY OF FEBRUARY 2024

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

(By Sri. **T.H.A.**, 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, Govindarajnar,
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.8

The aforesaid suit is for declaration, partition and consequential reliefs filed by the plaintiff against the defendants.

2. The plaintiff has filed the aforesaid I.A.No.8 U/O.6 R.17 of C.P.C., praying for permitting him to amend the plaint by permitting him to add para no.5(a).

3. The plaintiff has stated in the accompanying affidavit that the he could not add the necessary facts relating to the gift deed. That the plaintiff has pleaded for the declaration regarding the gift deed dated 20.04.1982 not binding on the plaintiff. However due to oversight he could not add the facts and prays for allowing the aforesaid application.



4. The Defendant has filed the objection stating that the the facts stated in the accompanying affidavit is false. That earlier similar amendment was sought by the plaintiff and that the said amendment was allowed by the court. That the aforesaid application is filed with the malafide motive and prays for dismissal of the aforesaid application.

5. Heard plaintiff and defendant.

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

1. *Whether the plaintiff has made out sufficient grounds to permit him to amend the plaint as sought for?*
2. *What order?*

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

Point No.1: In the Affirmaive,

Point No.2: As per final order.

For the following,



REASONS

POINT NO.1:-

8. The plaintiff has filed the aforesaid application praying for permitting him to add para 5(a) of to the plaint. In the said para 5(a) the plaintiff intends to add the facts stating that Sri.Kampanarasaiah during his lifetime had not disclosed about the gift deed to anyone during his lifetime.

9. The facts that are being pleaded by the plaintiff is already on record. The defendants have taken the same contention that the earlier amendment application filed by the plaintiff was allowed and the aforesaid pleadings are part of the plaint.

10. The Hon'ble supreme court of india in ***.Revajeetu Builders & Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37 : 2009 SCC OnLine SC 1709 at page 101, wherein Hon'ble Court gives the following guideline;***

61. The courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs.



The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive:

(i) At what stage the amendment was sought.

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage.

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic.

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.



(vi) In case of appeal to higher courts, the victim of the amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

Factors to be taken into consideration while dealing with applications for amendments

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;**
- (2) whether the application for amendment is bona fide or mala fide;**
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;**
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;**



(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) 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.

11. Thus it can be seen from the aforesaid case that the case is set down for the stage of further chief of DW-1. The proposed amendment sought does not take away the admissions in the aforesaid suit.

12. The plaintiff has stated that despite due diligence he could not file the aforesaid application in time. Further the objections reads that the defendants are well aware of the facts that is proposed to be pleaded. The proposed amendment only supplements the facts that are already there on record. Hence there would be no hardship to the defendants. Hence I answer point no.1 in the Affirmative



POINT NO.2:

13. 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.8 U/o.VI Rule 17 r/w. Sec.151
of CPC filed by the plaintiff is hereby
Allowed.**

**Plaintiff is directed to carry out+
amendment and amended plaint.**

(Dictated to the Typist directly on the computer,
typed by her corrected by me and then pronounced in the
open court on this the **13th day of February, 2024.**)

**(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.**