

KARN410009932014



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

Present:

Sri. Hanumanth Satwik.,^{LL.M.}
Addl. Senior Civil Judge & JMFC, Magadi

DATED : THIS THE 8th DAY OF SEPTEMBER, 2022

O.S.No.144/2014

- PLAINTIFFS** : 1. Smt. Gangambika,
W/o. H. Rajanna,
R/at: No.114, 8th 'A' Cross,
4th Main, Behind Ganesha Temple,
Prashanthnagar,
Bengaluru – 560 079.
2. Sri. K. S. Sowbhagya,
W/o. H. B. Somashekaraiah,
Aged about 47 years,
R/at. No.84/1, 'B' Cross,
3rd Main, Prashanthnagar,
Bengaluru – 560 079.

(Plaintiff No.1 by Sri. M.S.N. Advocate)
(Plaintiff No.2 by Sri. M.A.C. Advocate)

V/s

- DEFENDANTS** : 1. Sri. Parvathamma,
W/o. Shivarudraiah,
Died leaving behind

Plaintiff No.1, 2 and defendant
No.2 to 7 are his legal heirs.

2. Smt. Shivarudramma,
W/o. Late. Nanjundappa,
Aged about 66 years,
R/at: No.101, 4th 'A' Cross,
Pipeline Road,
Vijayanagara,
Bengaluru – 560 040.
3. Smt. Byramma,
W/o. Late. Veerabhadraiah,
Died leaving behind
Defendant no.8, 9, 14 & 15.
4. Smt. Lalithamma,
W/o. Honnappa,
Aged about 61 years,
5. Sri. Paramashivaiah,
S/o. Late. Shivarudraiah,
Aged about 59 years,
6. Sri. Karibasavaiah,
S/o. Late. Shivanna,
Aged about 66 years,

D1, 3 to 6 are R/at:
Kethohalli Village,
Tavarekere Hobli,
Chunchanakuppe Post,
Bengaluru South.

7. Smt. Gowramma,
W/o. Mariswamy,
Aged about 49 years,
R/at: No.47/A, BCC
Layout, 8th 'B' Cross,
14th Main, Vijayanagar,

Bangalore.

8. Sri. B. V. Srinivasa Murthy,
S/o. Late. Veerabhadraiah,
Aged about 44 years,
R/at: Yedyur, Kunigal
Taluk, Tumkur District.
9. Sri. B. V. Honnappa @
B. V. Honnaswamy,
S/o. Late. Veerabhadraiah,
Aged about 40 years,
R/at: No. 120, ISEC Road,
Nagarabhavi Village,
Bengaluru – 560 072.
10. Sri. G. S. Shivaprakash,
S/o. Late. Shivanna, Major,
R/at: Ganapathihalli,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South Taluk.
11. Sri. S. Srinivasa Reddy,
S/o. G. Siddareddy, Major,
R/at: Reddy Farm and
Nursery, BEML Layout,
R.R. Nagar, 3rd Stage,
Mysore Road,
Bengaluru – 560 098.
12. Sri. Byrappa,
S/o. Late. Shivanna,
Major, R/at. Kethohalli,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South.
13. Smt. S. R. Tulasaimatha,

W/o. S. Raju, Major,
R/a: Anamanahalli,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

14. Smt. Jayamma @ Vijaya,
W/o. Chandrashekar,
D/o. Late. Veerabhadraiah,
Aged about 40 years,
R/at: Muddanapalya Road,
Anjanapura, Magadi
Main Road, Bengaluru.
15. K. Shivarudra Prasad,
S/o. Karibasavaiah,
Aged about 19 years,
R/at: Kethohalli,
Chunchanakuppe Post,
Tavarekere Hobli,
Bangalore South.
Also at: C/o. Gowramma,
W/o. Mariswamy,
R/at: No.47/A,
BCC Layout, 8th 'B' Cross,
14th Main, Vijayanagar,
Bengaluru – 560 040.

(D1 & 3 dead)
(D2, 5 to 7 by Sri. G.P. Advocate)
(D8 by Sri. L.C. Advocate)
(D9 by Sri. D.H.M. Advocate)
(D11 by Sri. C.V.K. Advocate)
(D14 exparte)
(D15 by Sri. V.F.K. Advocate)

ORDER ON IA NO.22 and 23

The present suit is for declaration, permanent injunction,

partition and for mesne profits.

2. For the sake of convenience and to avoid repetition of facts these application are taken together for common discussion. The present applications have been filed by defendant no.9 seeking permission to reopen his side and permit him to lead evidence. Defendant no.9 submits that on the last of date of hearing his advocate was held up in some other court. As such, this court closed his evidence. In this regard, defendant no.9 prays as above.

3. Defendant no.2, 5 to 7 filed objections to IA No.22 and 23 contending that the application is not maintainable. The application is filed in collusion with defendant no.8. There are no bonfides in filing the applications. No reasons have been made out to recall. No sufficient reasons have been made out to allow the applications. In this regard, the defendants pray to reject the applications.

4. In the case at hand the counsel for the plaintiff and defendant no.8 submitted no objections to allow the applications.

5. Heard arguments of counsel.
6. Considering the contention of both the parties following points arise for my consideration.
 1. Whether defendant no.9 has made out a case to re-open his side as sought for?
 2. Whether defendant no.9 has made out a case to permit him to lead evidence?
 3. What order?
7. My finding for the above points are as follows
 - Point No.1 : In the affirmative
 - Point No.2 : In the affirmative
 - Point No.3 : As per final order
for the following ;

REASONS

8. **Point No.1 and 2:** - For the sake of convenience and to avoid repetition of facts these points are taken together for common discussion. It is the case of defendant no.9 that on the last of date of hearing his advocate was held up in some other court. As such, this court closed his evidence.

9. Be it noted, the defendant no.9 intends to lead evidence and substantiate his case. It is necessary to note that right of defendant no.9 to put forth his defence cannot be curtailed as the same amounts to curtailing the rights of defendant no.9 to put forth his stand. Considering the application and the objections I am satisfied with the reasons made out by defendant no.9 for not for not leading the evidence, at the earlier stage of the case. I am of the further view that the defendant no.2, 5 to 7 have every opportunity to test evidence of defendant no.9 by way of cross examination. This being the case, as the defendant no.2, 5 to 7 have the right to cross examine defendant no.9 and hence to test the averments, no harm will be caused to the defendant no.2, 5 to 7 if defendant no.9 is permitted to lead evidence, as the right of defendant no.2, 5 to 7 cross examine defendant no.9 and hence to test his averments remains intact. This being the case it is not just and proper to curtail the rights of defendant no.9 from leading evidence.

10. 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 of justice and not its mistress”.

In view of the law on hand and considering the circumstance of the present case I am of the view that the contention of defendant no.2, 5 to 7 are of no avail to them.

11. It is to be considered that if the present application is not allowed defendant no.9 cannot substantiate his defence and hence the inconvenience which may be caused to him is more than the inconvenience which may be caused to defendant no.2, 5 to 7 if the applications are allowed. Further, if the applications are not allowed the injury which may be caused to defendant no.9 cannot be compensated at any cost, on the other hand defendant no.2, 5 to 7 will have the opportunity to contest the matter and get the same decided on merits. Considering the facts and circumstances of the

case and for the reasons stated above and in the interest of justice and equity I decide point no. 1 and 2 in the affirmative.

12. **Point no.3**:- In view of reasons on point No.1 and 2, I proceed to pass the following,

ORDER

IA no.22 and 23 filed by defendant no.9 are hereby allowed on cost of Rs.100/- each.

The side of defendant no.9 is re-opened. defendant no.9 is permitted to lead evidence.

(Dictated to the Typist directly on the compute, typed by her, corrected by me and then pronounced in the open court on this the **8th day of September, 2022.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC
Magadi.**