

IN THE COURT OF PRL.,CIVIL JUDGE AND JMFC., GUBBI

Present : Smt.Vinutha.D.S., B.Sc.(Seri), LL.B.,
Prl. Civil Judge & JMFC., Gubbi.

Dated 5th day of September 2024

O.S. No.129/2012

Plaintiffs: Venkataiah S/o Venkataiah,
Dead by his Lrs.,

1. Boramma W/o Venkataiah,
Aged about 60 years,
2. Venkatalakshamma W/o Lakshmana,
Aged about 25 years,

Both are R/o N.G.Byala Mayasandra Hobli,
Turuvekere Taluk.

3. Veerabhadraiah S/o B.Rudraiah,
Aged about 50 years,
4. R.Gangadharaiah S/o B.Rudraiah,
Aged about 37 years,

Both are R/o Ungra Majare Gaddehally,
C.S.Pura Hobli, Gubbi Taluk.

(By Sri.C.R.B., Advocate)

VS/-

Defendants: Narasimhaiah S/o Narasimhaiah,
Dead by his Lrs.,

1. Kempamma W/o Narasimhaiah,
aged about 50 years.

2. Naveen S/o Narasimhaiah,
aged about 19 years.
3. Nagamma D/o Narasimhamurthy,
aged about 21 years.

All are R/o Gaddehalli Majare Ungra,
C.S.Pura Hobli, Gubbi Taluk.

(By Sri.S.R.R., Advocate)

ORDER ON I. A. No.7

Applicant : Veerabhadraiah (plaintiff No.3)

VS/-

Opponents: Narasimhaiah and others (defendants)

ORDERS ON IA.No.7

Plaintiff No.3 has filed this I.A.No.7 U/O 6 R 17 of CPC praying to permit him to amend the plaint.

The Proposed Amendment is as follows:

After para No.4;

4a. "After the death of Venkataiah, the plaintiff legal heirs namely Venkatalakshmamma and Boramma had sold 2 acres 2 guntas of land in schedule Sy.No.191 of Ungra, C.S.Pura Hobli, Gubbi Taluk to Veerabhadraiah S/o B.Rudraiah and R.Gangadharaiah S/o B.Rudraiah,

the 3rd and 4th plaintiffs under a registered sale deed dated: 24.03.2016 for valuable consideration and put them in possession and enjoyment of the same. Before purchasing the above said property from the above said vendors the 3rd and 4th plaintiffs have obtained permission from the concerned Authorities for purchasing the same. On the basis of the above said sale deed the khata and pahani of the schedule survey number are mutated into the names of the 3rd and 4th plaintiffs. The suit schedule property is an integral part of the above aid schedule Sy.No.191 of Ungra. The 3rd and 4th plaintiffs are in possession and enjoyment of the above said property purchased by them and raising crops on the same” to be added.

2. In the affidavit annexed to the application, plaintiff No.3 stated that, the plaintiff No.4 is his brother. It is stated that, the original plaintiff Venkataiah has filed this suit against the defendants for relief of declaration of title and recovery of possession in respect of the suit schedule property. It is further stated that, during pendency of the suit, the said Venkataiah died and subsequent to his death, his legal representatives namely Boramma (plaintiff No.1(a)) and Venkatalakshamma (plaintiff No.1(b)) have sold the land bearing Sy.No.191 of Ungra Village measuring about 2 acres 20 guntas to him and his brother (plaintiff No.4) under registered sale deed dated:24.03.2016 for valuable consideration. It is also stated that, his vendors have put him and his brother in possession and enjoyment of the said property. Now on the basis of the said sale deed the katha and pahani of the above said property is mutated in their names and it is stated that, the suit schedule

property described in the plaint schedule is integral part of the above said land bearing Sy.No.191 measuring 2 acres 20 guntas and it is stated that they are in possession and enjoyment of the above said property and have raised crops. Further, it is stated that, the proposed amendment sought is very essential to be pleaded in the plaint for total adjudication and therefore he prays to allow his application. It is also stated that, no hardship will be caused to the other side, if his application is allowed.

In support of his application the plaintiffs counsel has also filed photo copy of sale deed dated:24.03.2016 and photocopy of order dated:19.08.2021 in W.P.No.399/2018 connected with W.P.No.506/2019 connected with W.P.No.5058/2019 (GM-CPC).

3. Per contra the defendants have filed objection to the application. In the objection they have contended that, the facts narrated in the proposed para 4(a) is all false and therefore the application has to be rejected in the timeline. It is also contended that, the amendments sought changes the nature of the suit and it is inconsistent with the facts already pleaded in the plaint. It is also contended that, the plaintiff is not diligent in conducting the suit and if the application is allowed the defendants will be put to great hardship. Therefore, the defendants prays to dismiss the application with exemplary costs.

4. Heard both the sides. Perused the materials on record and the documents annexed to the application by the plaintiffs.

5. The only one point that arise for my consideration is:

Point No.1 : Whether the application filed by applicant/plaintiff No.3 under Order 6 R 17 of CPC deserves to be allowed?

Point No.2 : What Order?

6. My answer to the above points is as under :

Point No.1 In the Affirmative

Point No.2 As per the final order
for the following

REASONS

7. Point No.1:- At the outset this suit is filed by the original plaintiff Venkataiah against the defendants for relief of declaration of title and recovery of possession in respect of the suit property which is described as the shed/house measuring East:West 15 feet and North:South 20 feet constructed upon the land bearing Sy.No.191 of Ungra Village, C.S.Pura Hobli, Gubbi Taluk bounded by East: remaining land of the plaintiff in schedule Sy.No.191, West: remaining land of the plaintiff in schedule Sy.No.191, North: remaining land of the plaintiff in

schedule Sy.No.191 and South: remaining land of the plaintiff in schedule Sy.No.191.

This application is filed by the plaintiff No.3 when the matter is posed for the stage of additional written statement of defendants No.1(a) to (c). Now in the affidavit annexed to the application the plaintiffs No.3 and 4 are praying to amend the plaint by incorporating the facts narrated in the proposed para 4(a). It is their contention that, during pendency of the suit the Lrs of plaintiff Venkataiah i.e., Boramma (plaintiff No.1(a)) and Venkatalakshamma (plaintiff No.1(b)) have sold the land bearing Sy.No.191 situated at Ungra Village measuring 2 acres 20 guntas to plaintiffs No.3 and 4 under registered sale deed dated:24.03.2016. The photocopy of the sale deed produced by the applicants support their version.

Now these plaintiffs No.3 and 4 contended that, the suit schedule property is part and parcel of the property purchased by them under the registered sale deed dated:24.03.2016 and they also contended that, they are in possession and enjoyment of the said survey number land. It is observed from the order of the Hon'ble High Court in W.P.No.399/2018 connected with W.P.No.506/2019 connected with W.P.No.5058/2019 (GM-CPC) that the Hon'ble High Court had ordered to implead the plaintiffs No.3

and 4 in this suit as they are the subsequent purchasers of the land in dispute and since their substantial rights is involved in the subject matter which needs to be adjudicated. As per the order of the Hon'ble High Court the plaintiffs No.3 and 4 have come on record and now with this application they are intending to plead the facts which have occurred subsequent to the filing of the suit. The contentions raised by the defendants that, the proposed amendments changes the nature of the suit and it is contrary to the pleadings is not made out because the plaintiffs No.3 and 4 are pendentelite transferies and who have acquired interest in the subject property and they are vitally interested in the litigation. Therefore, if amendment is allowed no hardship will be caused to the defendants. Moreover, the defendants will also be given an opportunity to file the additional written statement and also they will be given an equal opportunity to cross examine the plaintiffs No.3 and 4. Therefore, no hardship are injustice will be caused to the other side if the application is allowed. Hence, to avoid the multiplicity of proceedings and for total adjudication of the matter the application deserves to be allowed. Accordingly, I answer the Point No.1 in the **Affirmative**.

8. Point No.2: As per above discussion, following order is passed.

ORDER

I A No.7 filed U/O 6 R 17 of CPC by the applicant is hereby allowed on cost of Rs.500/-.

For amendment of plaint and amended plaint.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in the Open Court on this 5th day of September, 2024).

**Sd/-
(Smt.Vinutha.D.S)
Prl.Civil Judge and JMFC,
Gubbi.**