

IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC.,

KUNIGAL

Present:

Sri LAKSHMI NARASIMHA R.V, B.A.L., L.L.B.,

Addl. Civil Judge & JMFC., Kunigal.

Dated: 14th Day of January, 2022

O.S.NO.316/2014

Plaintiff : Sri. Puttegowda,

V/s

Defendants : Sri. Venkataramaiah & Another

ORDERS ON APPLICATION (IA NO.IV) FILED BY THE
PLAINTIFF U/O.6 RULE 17 R/W/SEC.151 OF CPC.,

This application is filed by the plaintiff U/o.VI Rule 17 r/w/sec.151 of CPC praying this court to permit him to amend the plaint by inserting para No.4-A and prayer column with respect to registered gift deed dated 28/07/2014 executed by defendant No.1 in favour of defendant No.6 is not binding on the plaintiff.

2. In the affidavit annexed to the application, the plaintiff has stated that he has filed the present suit for the relief of partition and separate possession against the defendants. At

the time of the evidence, he came to know that the defendant No.1 has executed a registered gift deed dated 28/07/2014 in respect of the property bearing Sy.No.43/2, new number 43/5 in favour of defendant No.6. The defendant No.1, 2 and 6 have created the said gift deed with an intention to defeat the rights of the parties. Hence, the alleged gift deed is not binding on the plaintiff. Hence, it is necessary to amend the plaint by inserting para No.4-A and also the prayer column. The proposed amendment neither changes the cause of action nor nature of the suit. Hence prayed to allow the application.

3. The defendant No.6 has filed the objections and contended that the defendant No.6 in his written statement has taken a contention that the item No.2 of the suit schedule property has been acquired by the defendant No.1. The defendant No.2 has purchased the said property out of his own income and registered the same in the name of defendant No.1. Either the plaintiff nor other defendants have got rights in the said property. As such, the defendant has executed a registered gift deed in favour of defendant No.6. The defendant No.6 being the minor he

is represented by the defendant No.2. The plaintiff has kept quite for long time. Hence, the present application is liable to be dismissed.

4. Heard arguments and perused the records.

5. The following points would arise for the determination:

1. Whether the present application as sought by the plaintiff is just and necessary for the proper adjudication of the matter involved in the suit?

2. What order?

6. The findings on the above said points are under:

Point No.1 : *In the Affirmative*

**Point No.2 : As per final order,
for the following;**

REASONS

7. **Point No.1 :-** The plaintiff has filed the present suit for the relief of partition and separate possession in respect of the suit schedule properties. The plaintiff has sought for amendment of the plaint by inserting para No.4-A and also the prayer column.

8. Further, the plaintiff has contended that he came to know that the defendant No.1 has executed a registered gift deed in favour of the defendant No.6 in respect of the item No.2 of the suit schedule property. On the other hand the defendant No.6 has taken a contention that the said property is self acquired property of defendant No.2 purchased in the name of defendant No.1.

9. On perusal of the application and objections, it appears that the plaintiff has proposed to amend the plaint by contending that the alleged gift deed is not binding on him. Hence, this is court of the opinion that the plaintiff has not brought any new case by way of amendment. Further, this is a suit for partition and separate possession and onus is on the plaintiff to plead and prove that the suit schedule properties are ancestral and joint family properties.

10. At this stage, this court would like to rely upon a decision of Hon'ble Supreme Court of India in the case of **Rajeshkumar Aggarwal V/s. K.K. Modi reported in (2006) 4**

SCC 385, “The object of order 6 Rule 17 is that the Courts should try the merits of the case that come before them and should consequently allow all the amendments may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to other side. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger extent of doing full and complete justice to the parties before the Court”.

11. Keeping in view of the ratio laid down by the Hon'ble Apex Court, if the present case is discussed, it is to note here that the plaintiff has already pleaded that the item No.2 property is the ancestral property. Now by way of proposed amendment the plaintiff is intending to plead that the said registered gift deed in respect of the item No.2 property is not binding on him. Hence, this court of the opinion is that inspite of due diligence, the plaintiff could not have raised the same at the earlier stage. The

proposed amendment neither changes the cause of action nor changes the nature of the suit. Hence, the burden is on the plaintiff to prove his case.

12. Further it is made clear that mere allowing the present application does not mean that the plea of the plaintiff has been admitted. The defendants are at liberty deny the same. If the application is not allowed, there are chances of multiplicity of the proceedings. However, the plaintiff has filed present application at the stage when the case is posted for plaintiff evidence. Hence, the same can be compensated by imposing costs on the plaintiff, which would suffice for the delay caused by him. In view of the above reasons, this court inclined to allow the application. Accordingly point No.1 is answered in the ***Affirmative.***

13. **Point No.2 :-** For the above discussed reasons, this Court proceeds to pass the following;

ORDER

The application (IA No.IV) filed by the

plaintiff U/o.VI Rule 17 r/w/sec.151 of CPC is
hereby allowed on costs of Rs.500/-.

The plaintiff is permitted to amend the
plaint as sought in the application.

To carry out amendment and to file
amended plaint.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced
in the open court on this the 14th day of January, 2022]

(Lakshmi Narasimha R.V.)
Addl. Civil Judge and JMFC.,
Kunigal.