

KAUK020000632019



O.S./01/2019

IN THE COURT OF
PRL. SNR. CIVIL JUDGE AND CJM COURT, KARWAR AT
KARWAR, UTTARA KANNADA

PRESENT: Smt. Kavita S.Undodi,
B.A. LL.B(Spl)

Prl. Senior Civil Judge & CJM and
1st Addl. M.A.C.T., Karwar.

DATED: THIS THE 23RD DAY OF FEBRUARY-2026

O.S.No.01/2019

PLAINTIFF:

Smt. Kavita D/o Pundalik Naik
And W/o Babu Nailadi Rayarmane,

V/s.

DEFENDANTS:

1) Sri. Prashant S/o Pundlik Naik
and others.

Parties to I.A No.7

APPLICANT:

Smt. Kavita D/o Pundalik Naik
and W/o Babu Nailadi Rayarmane,

V/s.

OPPONENTS:

Sri. Prashant S/o Pundlik Naik
and others.

1	Provision under which the application is filed	:	under Order 6 Rule 17 R/w Section 151 of C.P.C.
2	Relief sought for	:	For amend the plaint as mentioned in amendment plaint.
3	The date on which the application is filed	:	I.A.No.7 on 18-07-2024
4	Number of the application	:	I.A.No.7
5	The date on which the objections are filed by different opponents	:	23-08-2024
6	The date on which the orders were passed on the said application	:	23-02-2026

:: ORDERS ON I.A. No.7 ::

The plaintiff has filed application under Order 6 Rule 17 R/w section 151 of C.P.C. for amendment of prayer column of the plaint.

2. The plaintiff has sworn to an affidavit stating that, she has filed suit for declaration and partition relating to suit schedule property. The prayer No.(b) is not properly drafted instead of seeking declaration, cancellation is sought. Taking advantage of the same, the defendant No.4 has raised the question of court fee and sought for rejection of the plaint. This court has rejected the plaint thereafter she has filed RFA No.100220/2021 before the Hon'ble High Court of Karnataka Dharwad Bench and Hon'ble High Court of Karnataka allowed the Regular First Appeal. She is not party to the sale deed executed by the defendant No.1 and 2 infavour of

defendant No.4. As such the cancellation of sale deed is not necessary and only declaration that it is not binding on her is sufficient. If the application is allowed it will not change the nature of the suit nor introduce new cause of action. If the application is not allowed it will cause injustice and inconvenience to her and prayed to allow the application.

3. On the other hand, the defendant No.1 and 2 have opposed the application by filing written objections and stated that, the plaintiff is seeking amendment of relief column of the plaint by replacing different relief column stating that register sale deed executed by the defendant No.1 and 2 infavour of defendant No.4 is not binding is with a clear malafide intention to avoid the payment of court fee on market value of the suit Sl.No.3 of 'A' schedule and 'B' schedule, which is outcome of after thought and it is quite contrary to law and true facts. In the written statement the defendant No.1 has taken contention that plaintiff is stranger to the family, hence she is not having any right or possession over the suit schedule properties.

4. Further averred in the objection that the plaintiff has not stated that she is in joint possession of the suit schedule properties as per the sale deed dated 16-11-2012 the defendant No.4 is in possession of suit schedule item No.3 of 'A' schedule and also 'B' schedule property. The

defendant No.1 and 2 have filed application under Order 7 Rule 11(a) to (d) of C.P.C. to reject the plaint on the ground of non payment of court fee, on the ground non existence of cause of action, suit is barred by limitation and thereafter this court has allowed the application and rejected the plaint. The plaintiff has preferred RFA No.100220/2021 before the Hon'ble High Court of Karnataka and Hon'ble High Court of Karnataka allowed the appeal and remanded the matter for reconsideration. The Hon'ble High Court of Karnataka set aside the order in respect of payment of court fee. The Hon'ble High Court of Karnataka not considered the order passed by this court relating to non existing of cause of action and question of limitation. However before passing of the final order Hon'ble High Court is held that this court has to reconsider the matter which means that all the questions raised in IA No.6 are kept open for fresh hearing by this court.

5. Further averred in the objections that the plaintiff noticing this fact with malafide intention to avoid the payment of court fee on market value of the suit Sl.No.3 and suit schedule 'B' has filed this application under Order 6 Rule 17 for seeking amendment of prayer No.B. In the pleadings the plaintiff nowhere stated that she is in joint possession of the property which was sold to the defendant No.4. The defendant No.4 has developed the property by investing huge amount. The plaintiff is having knowledge that after death of her mother the name of defendant No.1 and 2 mutated

in revenue records. The pleadings of the plaint are vague one. The plaintiff nowhere pleaded that the suit schedule properties are ancestral properties. This court is entitled to conduct enquiry at any stage of the proceedings and to recover the court fee from the plaintiff if the plaintiff is legally liable to pay and prayed to reject the application.

6. Heard on I.A.

7. The following points arises for my consideration;

:POINTS:

1. **Whether proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?**
2. **What order?**

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

Point No.1 – In the Affirmative

Point No.2 – Is as per the final order for the following;

:: REASONS ::

9. **Point No.1:-** The plaintiff has filed suit for partition and separate possession in the suit schedule properties. The plaintiff has filed this IA under Order 6 Rule 17 of C.P.C. for amendment of prayer column stating that she has filed suit for declaration and partition relating to suit schedule

property. The prayer No.(b) is not properly drafted instead of seeking declaration, cancellation is sought. Taking this advantage , the defendant No.4 has raised the question of court fee and sought for rejection of the plaint. This court has rejected the plaint thereafter she has filed RFA No.100220/2021 before the Hon'ble High Court of Karnataka Dharwad Bench and Hon'ble High Court of Karnataka allowed the Regular First Appeal. She is not party to the sale deed executed by the defendant No.1 and 2 infavour of defendant No.4. As such the cancellation of sale deed is not necessary and only declaration that it is not binding on her is sufficient. If the application is allowed it will not change the nature of the suit nor introduce new cause of action. If the application is not allowed it will cause injustice and inconvenience to her.

10. The defendant No.1 and 2 have taken contention in the objections that to avoid the payment of court fee, the plaintiff has filed this application. The plaintiff is not the daughter of Pundalik Naik. Admittedly the plaintiff is not party to the sale deed alleged to have executed by the defendant No.1 and 2 infavour of defendant No.4. The defendant No.1 and 2 have admitted the sale deed executed by them in favour of defendant No.4. The plaintiff cannot seek for cancellation of whole sale deed. Further the plaintiff has filed suit for partition and separate possession stating that she has filed suit for partition of joint family

properties of plaintiff and defendants. Whether plaintiff is joint family member along with defendant No.1 and 2 is matter of trial. Now the plaintiff wants to amend the prayer No.B of the plaint and she wants to insert that to declare that sale deed executed by the defendant No.1 and 2 infavour of defendant No.4 on 16-11-2012 in respect of Sl.No.3 of 'A' schedule and 'B' schedule property is not binding on the share of plaintiff and alternatively direct the defendant No.1 and 2 to pay the 1/3rd share of market value of the sold out property to the plaintiff towards her share. The plaintiff is not party to the sale deed, therefore she is seeking relief that the sale deed executed by the defendant No.1 and 2 infavour of defendant No.4 is not binding on her share. Therefore the proposed amendment will not change the nature of the suit. The defendants are having every right to cross examine the PW-1 in respect of contention taken by them in objections. To avoid multiplicity of proceedings, if the I.A is allowed on cost it will meet the ends of justice, accordingly point No.1 is answered in **Affirmative**.

11. Point No.2 : In view of the above discussion, I proceed to pass the following;

ORDER

**I.A.No.7 filed by the plaintiff under
Order 6 Rule 17 R/w section 151 of**

**C.P.C is hereby allowed on cost of
Rs.300/-.**

(Directly dictated to Stenographer on Lap-tap, print out taken by her, corrected and then pronounced by me in Open-Court this the **23rd day of February 2026**).