

IN THE COURT OF THE CIVIL JUDGE AND JMFC
ANKOLA

Dated this the 17th day of July 2019

PRESENT

Sri Rangaswamy J,
B.A.L., LL.M.,
Prl.Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.44/2017

PLAINTIFF: Mohan S/o Purassar Gaonkar,
APPLICANT Age: 65 years,
Occ: Agriculture,
R/o Basgok,
Taluk: Ankola,
District: Karwar, U.K.

(By Sri G.S.Savadatti and
Sri S.H.Nayak, Advocates)

-Vs-

DEFENDANT: Arvind S/o Mangesh Shetti,
OPPONENT Age : 42 years,
Occ: Business,
R/o Shirkulli,
Taluk: Ankola,
District: Karwar, U.K.

(By Sri V.A.Todurkar, Advocate.)

ORDER ON I.A.NO.III

The plaintiff has filed I.A.3 under Order 6 Rule 17
CPC to amend the plaint by incorporating the para
No.4(a) and 9(a).

2. The affidavit is filed in support of the application stating that the plaintiff came to know that the defendant has purchased the schedule property through a registered sale deed dated 13.10.2016. Therefore, the plaintiff sought for amendment to incorporate subsequent developments.

3. Objections filed by the defendant contending that when the defendant filed the written statement, the defendant has averred about the sale deed. The said thing is well within the knowledge of the plaintiff. Prior to agreement, the plaintiff is the witness to the agreement of sale and general power of attorney dated 28.3.2013 and also to will dated 28.3.2013. Hence, sought for dismissal.

4. Heard.

5. Point for consideration:

1. Whether the application deserves to be allowed?

2. What order?

6. My answers to the above points are as under:

Point No.1: In the affirmative.

Point No.2: As per final order
for the followings

REASONS

7. **POINT NO.1:-** The amendment now sought for is “ the defendant behind the back of the plaintiff on the strength of G.P.A. of Ramanath Vithoba Shetti has executed a sale deed in favour of himself on 13.10.2016 and same is registered in the Sub-Registrar of Karwar. But, no consideration amount is paid to Ramanath Vithoba Shetti. Hence, the alleged sale deed is illegal and not create any title, right and interest over the schedule property. The same is not binding on the title, interest of the plaintiff over the schedule property.

8. The suit filed by the plaintiff is seeking the relief of declaration that the plaintiff is the absolute owner of the schedule property by holding that the release deed dated 8.12.2015 is not binding on the plaintiff. The urge of the plaintiff is that, the schedule property earlier belongs to one Ramanath S/o Vithoba Shetti. He executed release deed in favour of plaintiff on 7.12.2015 and also correction deed in favour of plaintiff on 17.2.2016.

9. The defendants are in possession of the schedule property as a tenant. The defendants behind the back of the plaintiff and earlier owner Ramanath Vithoba Shetti on the strength of G.P.A. has executed release deed in favour of himself. But, no consideration is paid to Ramanath Vithoba Shetti.

10. The plaintiff by way of amendment wants to incorporate subsequent developments taken place in respect of the suit schedule property. The subsequent amendment sought for is that a sale deed has been executed by the defendant without paying any consideration amount to Ramanath Vithoba Shetti. The said sale deed is also in respect of the suit schedule property.

11. The amendment now sought for does not change or introduce the new cause of action or does not change the nature of the suit. The amendment now sought for is only the subsequent developments in respect of the schedule property. Therefore, for effective adjudication of the matter, amendment requires to be considered. Therefore, I answered point No.1 in the affirmative.

12. **POINT NO.2:-** In view of the discussion made herein above, I proceed to pass the following:

ORDER

The I.A. No.3 filed by the plaintiff under Order 6 Rule 17 of CPC is hereby allowed.

(Dictated to the Stenographer directly on computer, transcribed and typed by her, the same is corrected and then pronounced by me in the open court on this the 17th day of July 2019.)

(Rangaswamy J)
Prl.Civil Judge and JMFC, Ankola.

