

KAUP400024372023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS AT BAINDURU.**

PRESENT

Smt.Vidya, A.S. B.A., LL.B.
Civil Judge & J.M.F.C.,Bainduru.

Dated: This the 30th day of August, 2023.

O.S.No.417/2023 (Old O.S.No.473/2021)

Plaintiff	Manjunath B. , Aged about 56 years, S/o. Late Shankar, R/at: Mayyadi, Bijooru House, Bainduru Village and Taluk, Udupi District.
Defendants	1. Mukambu Sherigarthi , Aged about 77 years, W/o. Late Mahabala Sheregar, 2. Nagaraj , Aged about 61 years, S/o. Mukambu Sherigarthi, 3. Prema H. , Aged about 45 years, W/o. Nagaraj, Defendant No.1 to 3 are R/at: Mayyadi, Byndoor Village and Taluk, Udupi District. 4. Ganesh , Aged about 30 years, S/o. Nagaraj, R/at: Kolluru Police Station, Kolluru. 5. Hemaraj , Aged about 34 years, S/o. Vasudev,

	R/at: Byndoor Police Station, Byndoor.
	<u>Rank of the Parties On I.A.III</u>
Applicant/Plaintiff:	Manjunath B. (Rep. By Sri. T.G.R- Advocate)
Opponents/Defendants :	Mukambu (Rep. by Sri.T.B.S- Advocate)

ORDER ON I.A. NO.III

During trial stage the applicant has filed IA No.III under Order VI Rule 17 of CPC seeking permission of the Court to amend the plaint.

2. In the accompanying affidavit, the applicant has stated that, after death of Shankar Sherigar, his children are got right over the item No.2 of suit schedule property. On 08-11-2021 brother of plaintiff purchased the said property from LR's of Parvathi Heggadthi and Sanjeevi M. Shetty. With these averments the applicant has sought for allowing the application.

3. Per contra, defendants have filed objection to the said application, contending that, alleged purchasers had no right over the item No.2 of suit schedule property. They have created the false documents. With these contention the opponents have sought for rejecting the application.

4. Heard the argument of the learned counsel appearing for the parties and perused the material on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?

Point No.2: Whether the proposed amendment change as the nature of the suit or cause of action?

Point No. 3: What order?

6. The findings of this Court on the above said points are as under:

Point No.1: In the Affirmative;

Point No.2: In the Negative;

**Point No.3: As for the final order
for the following:**

REASONS

7. **Points No.1 and 2:** : On perusal of case file, it is seen that the plaintiff has sued the defendants for seeking the relief of declaration and permanent injunction.

8. The object of Order VI Rule 17 is to minimize the litigation, minimize the delay and to avoid multiplicity of suits. The plaintiff has not introduced a new cause of action on the contrary,

the amendment relates to the question in controversy. Hence, amendment is necessary for the purpose of determining the real question in controversy between the parties. The plaintiff has made out sufficient grounds to allow the application. With these observations, this court has answered point No.1 in the affirmative and point No. 2 in the negative.

9. Point No.3: For the aforesaid discussion on point No.1 and 2, this Court proceeds to pass the following:

ORDER

I.A. No.III filed by the applicant under Order VI Rule 17 of CPC is hereby allowed.

The plaintiff is permitted to amend the plaint.

No order as to costs.

For amendment and amended plaint.

Call on: 14-09-2023.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **30th** day of **August, 2023**)

(Smt.Vidya A.S)
Civil Judge & J.M.F.C., Baiduru.