

KABI200003752020



IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT: HAGARIBOMMANAHALLI

DATED THIS THE 9th DAY OF APRIL- 2025

PRESENT

Sri. SAYED MOHIUDDIN URF KHAWAJA PEERAN, B.A., LL.B. (Spl.),

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.35/2020

- PLAINTIFF/s :1)**Smt.Sumithamma W/o Late Basappa,**
Aged about: 70 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Bellary District.
- 2)**Smt.Maladevi W/o U.Kotreshappa**
D/o Dossabasappa @ Doddappa,
Aged about: 40 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Bellary District.
- 3)**Smt.Shanthamma W/o Late Gayappa,**
since dead by Lrs.,
- 3(a) **Smt.Basamma W/o Late Bharamappa,**
Aged about: 77 years, Occ: Housewife,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(b) **Nagaraj S/o Late Bharamappa,**
Aged about: 52 years, Occ: Housewife,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.

- 3(c) **Smt.Mangalamma W/o Basavaraj
D/o Late Bharamappa,**
Aged about: 46 years, Occ: Housewife,
R/o: Kumbalagunti Village, Kudligi
Taluk, Vijayanagara District.
- 3(d) **Smt.Dodda Basamma W/o Late Kanchappa
D/o Late Goyappa,**
Aged about: 75 years, Occ: Housewife,
R/o: Haregondanahalli Village,
Hagaribommanahalli Taluk,
Vijayanagara District.
- 3(e) **Smt.Savithamma W/o Late Shambunath,**
Aged about: 66 years, Occ: Housewife,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(f) **Smt.Vidya W/o Mugappa,**
Aged about: 23 years, Occ: Housewife,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(g) **Amith S/o Late Shanbunath,**
Aged about: 3 years, Minor, represented
by his natural guardian mother Smt.Vidya
W/o Mugappa, aged about 23 years, Housewife,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(h) **Smt.Mahadevakka W/o Thippeswamy,**
Aged about: 72 years, Occ: Housewife,
R/o: Sirigere Village, Jagalur Taluk,
Davanagere District.
- 3(i) **Nagarathna M. W/o Thippeswamy,**
Aged about: 34 years, Occ: Housewife,
R/o: Sirigere Village, Jagalur Taluk,
Davanagere District.
- 3(j) **Smt.Annapurna W/o Yeriyappa,**
Aged about: 31 years, Occ: Housewife,
R/o: Haregondanahalli Village,
Hagaribommanahalli Taluk,
Vijayanagara District.

- 3(k) **Sheelamma W/o Late Bheemappa
D/o Late Goyappa,**
Aged about: 68 years, Occ: Housewife,
R/o: Beemasamudra Village, Kudligi
Taluk, Vijayanagara District.
- 3(l) **Smt.Raviyamma W/o Late Eshwarappa,**
Aged about: 60 years, Occ: Housewife,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(m) **Manjunath S/o Late Eshwarappa,**
Aged about: 30 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(n) **Maruthi S/o Late Eshwarappa,**
Aged about: 28 years, Occ: Village Accountant,
R/o: Kurugodu, Kurugodu Taluk,
Bellary District.
- 3(o) **Lokamma W/o Late Huchappa D/o
Late Goyappa,**
Aged about: 65 years, Occ: Housewife,
R/o: Hossur Village, Kudligi Taluk,
Vijayanagara District.
- 3(p) **Shivanna S/o Late Goyappa,**
Aged about: 63 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Vijayanagara District.
- 3(q) **M.Revanasiddappa S/o Goyappa,**
Aged about: 50 years, Occ: Teacher,
R/o: KVR Colony, Hagaribommanahalli
Taluk, Vijayanagara District.
- 4) **Smt.Girijamma W/o Late Mallapurada
Prabhakara,**
Aged about: 67 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Bellary District.
- 5) **Smt.Basamma W/o Jagadeesha D/o Mallapura
Prabhakara,**

Aged about: 40 years, Occ: Agriculturist,
R/o: Mudukarahalli Village, Jagaluru
Taluk, Davanagere District.

6) **M.Rajashekara S/o Late Mallapurada
Prabhakara,**

Aged about: 38 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Bellary District.

7) **M.Shivakumara S/o Late Mallapurada
Prabhakara,**

Aged about: 36 years, Occ: Agriculturist,
R/o: Benakallu Village, Hagaribommanahalli
Taluk, Bellary District.

8) **Smt.Geetha W/o Satish D/o Late Mallapurada
Prabhakara,**

Aged about: 32 years, Occ: Agriculturist,
R/o: Roopanagudi Bellary, Bellary Taluk,
Bellary District.

Vs.

- DEFENDANT/s : 1. **P.Venkatesh S/o Late P.Ningappa,**
Aged about: 46 years, Occ:Housewife,
R/o Kallahalli Village, Hagaribommana
halli Taluk, Bellary District.
2. **K.P.Parashuram S/o Late P.Ningappa,**
Aged about: 44 years, Occ:Agriculturist,
R/o Kallahalli Village, Hagaribommana
halli Taluk, Bellary District.
3. **K.Goneppa S/o Kariyappa,**
Aged about: 49 years, R/o Bennekal
Village, Hagaribommanahalli Taluk,
Vijayanagara District.

I.A.No.VII

APPLICANT/PLAINTIFF NO.6/s: **M.Rajashekara S/o Late
Mallapurada Prabhakara**

(Rep. by Sri.**G.K.G.**, Advocate.)

Vs.

RESPONDENTS/DEFENDANTS/s: **P.Venkatesh S/o Late
P.Ningappa and others**

(Def.No.1 & 2 Rep.by Sri. **K.S.S.**, Advocate.)

(Def.No.3 Rep.by Sri.**U.K.**, Advocate.)

**:ORDER ON I.A. No.VII FILED BY THE PLAINTIFF NO.6
UNDER ORDER VI RULE 17 R/w SEC.151 of CPC:**

The plaintiff No.6 has filed the present I.A.No.VII under Order VI Rule 17 R/w Sec.151 of CPC for amendment of plaint.

The proposed amendment is as under :-

SCHEDULE

Add in Para IV in line 17 after property add as The defendant No.2 has alleged to executed the registered sale deed in favour of K.Goneppa S/o Kariyappa under document No.48/2021-22 dated 29.10.2021 of the plaint schedule mentioned property without having right over the same and the said alleged registered sale deed is to be cancelled and on the basis of registered sale deed mutation has not been effected and the possession has not been delivered.

Add in Para IV in line 21 after 2019 and for cancellation of alleged registered sale deed alleged to be executed by defendant No.2 to the K.Goneppa S/o Kariyappa under document No.48/2021-22 dated 29.10.2021.

In Para V in line 7 after defendant No.2 add as on 29.10.2021 being the date of alleged registered sale deed executed by the defendant No.2 to K.Goneppa S/o Kariyappa under document No.48/2021-22, dated 29.10.2021.

In Para VI in line 11 after 1958 the suit is valued for the purpose of cancellation of registered sale deed of the plaint schedule mentioned property for a sum of Rs.2,43,000/- and the Court fee for a sum of Rs._____ is herewith paid under Section 38 of the Karnataka Court fees and Suit valuation Act 1958.

In Para VII after Para(c) add as (cc) for cancellation of registered sale deed alleged to be executed by the defendant No.2 in favour of K.Goneppa S/o Kariyappa under document No.48/2021-22, dated 29.10.2021.

2. In the accompanying affidavit to the IA, it is stated by the plaintiff No.6 that, the plaintiffs have filed the present

suit against the defendants for the relief of declaration of title, permanent injunction and for cancellation of relinquishment deed. He recently came to know from the Village Accountant that the defendant No.2 without any right had executed the registered sale deed dated 29.10.2021 in favour of K.Goneppa, therefore it is just and necessary to amend the plaint for seeking the relief of cancellation of the above said sale deed executed by the defendant No.2 in favour of K.Goneppa. If the application is allowed no injustice will be caused to the other side, if the application is not allowed the plaintiffs will be put to hardship. Hence, he prays to allow the IA.

3. To the said application, the defendants have filed objections by denying the entire contention of the plaintiffs, and further contended that the defendant No.2 having lawful ownership under Transfer of Property Act. He has absolute right to alienate the property, therefore he had executed the sale deed. On the date of execution of the sale deed, possession of the suit schedule property was delivered. Hence question of cancellation of the said sale deed does not arise.

The valuation made in the application is incorrect and not properly valued. The plaintiffs have filed the present application with an intention to drag on the proceedings. Hence they pray to dismiss the same.

4. Heard the arguments and perused the records.
5. The following points arise for my consideration:

1. **Whether the plaintiffs have made out proper grounds to allow the I.A.No.VII?**

2. **What order?**

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

Point No.1 : In the **AFFIRMATIVE**

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

REASONS

7. **Point No.1** :- The present suit is filed by the plaintiffs against the defendants for the relief of declaration of title, permanent injunction and cancellation of relinquishment deed. In the present case on hand, the defendant No.1 filed the written statement. When the case was posted for hearing on I.A.No.II, the plaintiffs have filed the I.A.No.VII for amendment of plaint along with I.A.No.VIII

under Order VII Rule 14(2) R/w Sec.151 of CPC, and I.A.No.IX under Order I Rule 10 R/w Sec.151 of CPC. The said I.A.No.IX was allowed on 14.06.2024. The proposed defendant i.e., the above said K.Goneppa has impleaded in the present suit as defendant No.3. Later on, on 27.09.2024 Issues were framed and case was posted for plaintiff evidence. On 14.10.2024 Advocate for plaintiff prays to consider the I.A.No.VII and VIII. The I.A.No.VII and VIII were taken on board for disposal and defendant No.1 and 2 have filed the objections to I.A.No.VII.

8. Order 6 Rule 17 of Civil Procedure Code., 1908
provides as under:

"17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for

amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

9. I have perused the material available on record. In the present suit the defendant No.1 has filed written statement. Issues were framed. But plaintiff not examined before the Court. According to the plaintiff the defendant No.2 sold the property to defendant No.3 under registered sale deed dated 29.10.2021. Now the plaintiff is willing to amend the plaint with regard to the above said sale deed. As per the contention of the plaintiffs it appears that the plaintiffs filed an application for amendment of plaint to state certain subsequent events, that is the defendant No.2 during the pendency of the suit sold the property to defendant No.3 and they seeking the relief with regard to the said sale deed. On going through the same it appears that the said amendment will not introduce any new facts. The said amendment will not withdrawn any admissions and further

it appears that, the said amendment is necessary for determining the real question in controversy between the parties. The said amendment will not set up an entirely new case. The said amendment is appeared to be necessary to clarify the pleadings.

10. In the reported decision **(2022) SCC Online SC 1128 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.)** in **Para No.70** of the said Judgment the **Hon'ble Supreme Court of India** held as under.

70. Our final conclusions may be summed up thus: (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to

the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case

the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a

chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).

In the present case on hand trial has not yet commenced. On looking through the facts and circumstances of the case, I am of the opinion that if the amendment application is allowed no injustice will be cause to the defendants. Mere allowing for amendment of pleadings does not means that same is proved. The burden of proving the same as per amendment is lies on the person who sought the amendment. Furthermore, the defendants have full opportunity to file the additional written statement to contest

the suit. If the said application is not allowed it cause injustice to the plaintiffs and further it amounts to multiplicity of the proceedings. If the application is allowed no injustice will be caused to the defendants. If the said application is allowed on cost it would meets the ends of justice. On the basis of above reasons and discussion, I hold **Point No.1** in the **AFFIRMATIVE**.

11. Point No.2 :- For the aforesaid reasons and discussions made above I proceed to pass the following: -

ORDER

I.A.No.VII filed by the plaintiff No.6 under Order VI Rule 17 R/w Sec.151 of CPC., is hereby allowed on cost of Rs.200/-.

The plaintiff is permitted to amend the
plaint as prayed in the IA.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 9th day of April 2025.)

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI**