

Order below Exh No.94

The plaintiff has filed present application for addition of Shivraj Madiwalappa Utage as the defendant No. 3 in the present suit as well as for amendment in plaint and addition of prayer clause.

2) It contended that the plaintiff has instituted the suit for possession and declaration. He further stated that defendant No. 1 had executed registered sale-deed bearing No. 2603/2025 dated 13.05.2025 in favour of Shivraj Madiwalappa Utage in respect of suit properties. Therefore, Shivraj Madiwalappa Utage is the necessary party to the present suit. Hence, he should be added as defendant No. 3 in the present suit. He further stated that he also intended to plead regarding the aforesaid sale-deed and consequential relief. He further asserted that he has paid the required court fees. Hence, there is need to add paragraph No. 10/1 and 12/1 as well as addition of prayer clause as 2/1 i.e. sale-deed No. 2603/2015 dated 13.05.2025 executed by defendant No. 1 in favour of defendant No. 3 is null and void and thus is not binding upon him. Hence, he prayed to allow present application.

3) Despite of opportunity defendants have failed to file their say. Hence, present application is proceeded without their say.

4) Perused application, copy of the sale-deed and record of the case. Heard the advocate of plaintiff.

5) Plaintiff has instituted suit for declaration and partition. On the perusal of Index-II of sale-deed vide Exh.99 it appears that the Sultana Mohammad Nawab Burhan i.e. defendant No. 1 had executed the registered sale-deed in favour of Shivraj Madiwalappa Utage in respect of suit properties i.e. Survey No. 17 and 32 on 13.05.2025. It apparently shows that suit properties are purchased by Shivraj Madiwalappa Utage and Now he has the title of the suit properties. Thus, it is clear that the plaintiff has been seeking the proposed amendment.

6) The principles relating to amendment of pleading have been summed up in the recent judgment of Hon'ble Supreme Court in Life Insurance Corporation of India(supra) as

- 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 the multiplicity of the proceeding, provided
 - a) the amendment does not result in injustice to other side
 - b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by party which confers a right on the other side and
 - c) the amendment does not raise a time barred claim, resulting in divesting of other side of a valuable accrued right (in certain situation)

7) On the perusal of proposed amendment, it appears that it is necessary to determine the real question in controversy and avoid multiplicity of proceeding. At the same time, it would not cause any injustice to defendants. On the comparison of proposed amended prayer with prayer in suit, it seen that it does not change the nature of suit. On the other hand, it is consequential relief if plaintiff has succeeded in suit.

8) In such circumstances if the said amendment is allowed, no prejudice would be caused to the defendant and definitely will not change the nature of suit and not brought new case. Hence, I pass following order:

ORDER

- 1) The application at Exh no.94 is allowed.
- 2) The plaintiff shall carry out the requisite amendment in the plaint within 14 days from the date of order and furnish amended copy of plaint.

Date:24.07.2025

Ausa

(Smt. S. H. Nalawade)

3rd Jt. C. J. J. D, Ausa.