

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC., AT GOWRIBIDANUR**

Dated this the 02nd day of June 2022

**PRESENT:- Sri. MANJUNATHA CAHARI D.K., B.A.,
L.L.B.,**

Addl. Civil Judge and JMFC.,
Gowribidanur.

ORIGINAL SUIT NO.220/2011

PLAINTIFFS: 1. Sri. Kempe Gowda
S/o B.H.Anjinappa,
Aged about 45 years
R/at Bagaluru Village,
Jala Hobli,
Bangalore North Taluk.
Bangalore District.

(Rep. by Sri.SVG., Advocate)

-Vs-

DEFENDANT: 1. Smt. Chikkamma
W/o Late K. Muniyappa,
Aged about 80 years,
R/at Sultan Pete Village,
Nandi Hobli,
Chikkaballapur District.

2. Sri. Ramesha
W/o Late S.P. Narayanappa,
Aged about 28 years,

R/at Sultan Pete Village,
Nandi Hobli,
Chikkaballapur District.

(Rep. by Sri. G.R.V, Advocate)

I.A.III FILED U/O 6 RULE 17 OF CPC

Smt. Chikkamma and another .. APPLICANT/DEFENDANT.

- V/S -

Sri. Kempe Gowda .. OPPONENTS/PLAINTIFFS.

ORDERS ON APPLICATION FILED BY THE
PLAINTIFF U/O 6 RULE 17 R/W SEC 151 OF CPC ON
08.02.2022.

The plaintiff has filed this application for seeking permission to amend the plaint has sought in their application.

2. The plaintiff has filed the suit against the defendants for the relief of permanent injunction restraining him from interfering with peace full possession and enjoyment of the plaintiff over the suit schedule property . On the other hand the defendants have filed w/s and denied the facts of the plaintiff. .

3. When the matter has been posted for arguments on merits, then the plaintiff has filed this application for sought amendment in of the prayer in the plaint.

4. Now the plaintiff has sought amendment in the plaint as under:

Proposed Amendment

In Plaint prayer insert para No.E and F as

e) To declare that, the allwged partition deed dated 14.03.2011 in favour of the 2nd defendant to the suit schedule property is null and void.

f) Declare that the plaintiff is the absolute owner of the suit schedule property.

5. The plaintiff as stated in the affidavit accompanied application that he has purchased the suit schedule property from 1st defendant and immediately after the sale transaction the defendant have approached this Court and obtained exparte decree against him. Thereafter they have colluded each other and fraudulently created a partition deed between them, where in only Rs. 5,000/- is allotted to the 1st defendant and entire 5 acres 06 guntas of land was allotted to the

share of the 2nd defendant. Hence by virtue of such concocted documents has disputing is title and declare his title in respect of suit schedule property, the plaintiff filed this application for seeking amendment for declaring his title. Hence, he has prayed to permit him to implead the said property to the plaint.

6. On the other hand the defendant No.2 has filed objection and contended that the application is one for intention to drag on the proceedings. This application has filed after laps of 11 years of filing of this suit. The defendant filed the written statement on 07.01.2012 and on the same day the defendants narrated the facts of such partition affected on 14.03.2011, but the plaintiff has not questioned the same when the facts come to the knowledge to him. If the application is allowed it will be changed the nature of the suit, reliefs and cause of action. Hence, in view of the above aspects the defendant No.2 prays to dismiss the application with cost of Rs.5000/-.

7. Heard both the side on IA and perused the documents available on record.

8. The points that would arise for my consideration are:

1. Whether the application filed by the plaintiff is deserve to be allowed?

2. What Order?

9. My findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : As per the final order

REASONS

10. Point No.1: The plaintiff filed this application for permit them to insert a new property in the plaint by way of amendment.

11. In this stage the Court has relied the following decision in Rajkumar Guruwara v. S.K Sarwagi and Co. (P) Ltd., (2008)14SCC 364. The Hon'ble Apex Court held as "It is settled law that the grant of application for amendment shall be subject to certain conditions, namely (I) when the nature of it is changed by permitting amendment; (ii) when the amendment would result introducing new cause of action and intends to prejudice the other party; and (iii) when allowing amendment application defeats the law of limitation,

12. On go through the para 20 of the written statement therein stated that the 1st defendant relinquished her right, possession over the suit schedule the property under partition deed. The defendant filed written statement on 07.01.2012 and the facts as to partition was come to knowledge to the plaintiff as on 07.01.2012. When the plaintiff acquired the rights, then he has to question the same by way of proper procedure and the plaintiff has to file this application as on 07.01.2012 for questioning the alleged partition deed. On go through the affidavit the plaintiff has not narrated his due diligence to file this application. The plaintiff has not explained why he could not seek amendment when he has known the partition affected on 14.03.2011.

13. In the above discussion if the application is allowed defiantly there will be placed a new cause of action and introducing a new cause of action and also drag on the proceeding. Hence, the application filed by the plaintiff is deserved to be not allowed. **Hence, I answered point No.1 in Negative.**

14. Point No.2:- For the foregoing reasons assigned, the Court proceeds to pass the following:

ORDER

IA filed by the plaintiff under order 6
rule 17 r/w Sec.151 of CPC is hereby
dismissed.

No order as to cost.

(Dictated to the Stenographer directly on computer, computerized
by her, corrected, revised and then pronounced in the open Court on this
the 02nd day of June 2022)

SD/-

(MANJUNATHA CHARI. D.K.)
Addl. Civil Judge and JMFC.,
Gowribidanur.