

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

W.P.No. 207142/2017 (GM-CPC)

BETWEEN:

SHANKERAPPA S/O
BASAPPA KANJI,
AGED ABOUT: 78 YEARS,
OCC: AGRICULTURE &
BUSINESS,
R/O VILLAGE DUBALGUNDI,
TQ. HUMNABAD, DIST: BIDAR
NOW AT VAKKALGERA, KALABURAGI,
DIST: KALABURAGI-585 101.

.... PETITIONER

(BY SRI. D.P. AMBEKAR, ADVOCATE)

AND:

GURUPADAPPA S/O
BASAPPA KANJI,
SINCE DECEASED BY HIS LRs
(DEFENDANT NO.1
BEFORE THE TRIAL COURT

1. SUSHILABAI W/O
GURUPADAPPA KANJI,
AGE: 81 YEARS,
OCC: H.H.WORK,
R/O HALLIKHED B,
TQ. HUMNABAD,
DIST: BIDAR-585 127.

2. DR. BASWARAJ S/O.
GURUPADAPPA KANJI,
AGE: 61 YEARS,
OCC: MEDICAL PRACTITIONER,
R/O. HALLIKHED B, TQ. HUMNABAD,
DIST: BIDAR-585 127.
3. RAJAPPA S/O
GURUPADAPPA KANJI,
AGE: 56 YEARS,
OCC: AGRICULTURE,
R/O. HALLIKHED B, TQ. HUMNABAD,
DIST: BIDAR-585 127.
4. SHOBHA D/O
GURUPADAPPA KANJI,
AGE: 51 YEARS,
OCC: HOUSEHOLD,
R/O. HALLIKHED B, TQ. HUMNABAD,
DIST: BIDAR-585 127.
5. MAHESH S/O
GURUPADAPPA KANJI,
AGE: 48 YEARS,
OCC: ADVOCACY,
R/O. HALLIKHED B, TQ. HUMNABAD,
DIST: BIDAR-585 127.
6. LALITABAI W/O
SUBHASH SAJJANSHETTY,
AGE: 64 YEARS,
OCC: HOUSEHOLD,
R/O. HAGARGUNDAGI,
TQ. & DIST: KALABURAGI.
7. MALLAMMA W/O
BASWARAJ SAJJANSHETTY,
AGE: 58 YEARS,
OCC: HOUSEHOLD,
R/O. SULEPETH, TQ: CHINCHOLLI,
DIST: KALABURAGI.

8. PADMAVATI W/O
SUBHASH GANGA,
AGE: 42 YEARS,
OCC: HOUSEHOLD WORK,
R/O. DUBALGUNDI, TQ: HUMNABAD,
DIST: BIDAR.

... RESPONDENTS

**(BY SRI. SANJEEV KUMAR C. PATIL, ADV. FOR R8;
R1 TO R5, R6, R7 ARE HELD SUFFICIENT V/O DATED
31.03.2022)**

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN ORDER OR WRIT IN THE NATURE OF CERTIORARI QUASHING IMPUGNED ORDER ON I.A.NO.11 DATED 21.08.2017 PASSED IN O.S.NO.143/2011 BY THE LEARNED SENIOR CIVIL JUDGE & JMFC, HUMNABAD, VIDE ANNEXURE-E AND CONSEQUENTLY ALLOW THE APPLICATION I.E. I.A.NO.11 AND ETC.,

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

This writ petition is filed challenging the order of dismissal of the application seeking amendment of plaint in terms of the order dated 21.08.2017. The application was filed seeking amendment of plaint before the commencement of evidence of the plaintiff. The suit is filed seeking a relief of declaration and perpetual injunction. The plaintiff has filed an application to amend the plaint to incorporate the details relating to inheritance

of the property from his grandmother. This application was opposed by the defendants. The Trial Court accepted the contentions raised by the defendants and rejected the application filed by the plaintiff seeking amendment. Hence, the present writ petition is filed by the plaintiff.

2. The learned counsel for the petitioner would submit that said amendment is necessary for adjudication of the case on hand. The application was filed before the commencement of the Trial. Hence, the application could not be rejected and the proposed amendment does not change the nature of the suit and it only provides better particulars relating to the facts of the case. Under the circumstances it is urged that there is no justification to reject the application.

3. The learned counsel for respondents vehemently opposed the submission made by the learned counsel for the petitioner and would also submit that, the plaintiff is not entitled to the relief of amendment claimed in the application. It is the submission of learned counsel

for respondents that this is third application filed by the plaintiff and he is not diligent to prosecute the matter and is only intending to delay the proceeding which is pending before the Trial Court and accordingly, prays for dismissal of the writ petition.

4. This Court has considered pleadings as well as impugned order. From the application which is moved for amendment, it is apparent that the proposed amendment does not change the nature of the suit as well as cause of action and it seeks to provide better details relating to inheritance of the property in question. Therefore, the Trial Court is not justified in rejecting the application for amendment and the said amendment does not cause prejudice to the defendants.

5. However, during the pendency of the case three applications were filed seeking amendment. This Court is of opinion that, the amendment application is to be allowed on certain conditions by imposing cost on the plaintiff/petitioner. Accordingly, writ petition is allowed.

Hence, the following :-

ORDER

- i. The impugned order dated 21.08.2017 is set-aside.
- ii. I.A.No.11 in O.S.No.143/2011 filed by the plaintiff before the Senior Civil Judge and JMFC., Humnabad seeking amendment is allowed subject to condition that the plaintiff shall pay cost of Rs.5000/- to defendant No.2 and the payment of cost is condition precedent to carry out the amendment in the plaint.
- iii. If cost is not paid, benefit of order in this petition will not be available to the petitioner.

**Sd/-
JUDGE**

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