



HC-KAR

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF JUNE, 2025**

**BEFORE**

**THE HON'BLE MR JUSTICE C.M. POONACHA**

**WRIT PETITION NO. 4248 OF 2016 (GM-CPC)**

**BETWEEN:**

SMT DAMAYANTHI BEN, ALIAS DAMAYANTHI BAI  
W/O LEELADHARCHAND HIRJICHAND (CHAWHAN)  
AGED ABOUT 74 YEARS,  
R/A NO.9, SHABARI,  
VENKATACHARINAGAR,  
RAILMENS COLONY,  
RMV-II STAGE,  
BANGALORE-560094

SINCE DECEASED BY LR'S

A) REKHA CHAUHAN  
W/O.JASWANTHKANTILAL CHAUHAN,  
AGED ABOUT 57 YEARS,  
R/AT.S.NO.52/2/1/1/1/2,  
52/2/1/1/2, FLAT NO.201,  
'A' WING, KIRTI AVENUE BUILDING,  
NEAR PUNE MUMBAI HIGHWAY,  
PUNE CITY, PUNE, MAHARASHTRA-411021,

B) JYOTI CHAUHAN,  
W/O.DINESH CHAUHAN,  
AGED ABOUT 56 YEARS,  
R/AT. L31, ASHOK VIHAR COLONY,  
PHASE II, PAHRIYA, VARANASI,  
UTTAR PRADESH-221007.

C) HINA C PARMAR,  
W/O.CHANDRESH V PARMAR,  
AGED ABOUT 55 YEARS,  
R/AT.39, MOSHER DRIVE,  
SAN JOSE CA-95135-1756.

...PETITIONERS

(BY SRI. A ANAND SHETTY, ADVOCATE FOR LR'S OF DECEASED)





**AND:**

1. SRI. E.V. DINESH,  
MAJOR,  
S/O. LATE E.G. VISWAMBAVAN,  
R/A. NO. 27, SKT LAYOUT,  
BANGALORE-560 097.

SINCE DECEASED BY LR'S

1. (A). SMT.USHA DINESH  
W/O LATE.E.V.DINESH  
AGED ABOUT 45 YEARS,

1. (B).SRI.ADARSHA.E.D  
S/O LATE E.V.DINESH  
AGED ABOUT 22 YEARS

1. (C). ATHIRA E.D  
D/O LATE.E.V.DINESH  
AGED ABOUT 16 YEARS,  
LRs NO.1(C) IS MINOR

REPRESENTED BY HER NATURAL GUARDIAN,  
MOTHER SMT. USHA DINESH,  
i.e., LRs OF RESPONDENT NO.1 (A).

ALL ARE RESIDING AT

NO.27, SKT LAYOUT  
(SRI.KRISHNA TEMPLE LAYOUT),  
DODDABOMMASANDRA,  
VIDYARANYAPURA POST,  
BENGALURU-560097.

2. SRI. D. KRISHNAMURTHY,  
MAJOR, S/O. LATE G. DEVAPPA,  
R/A. NO. 53, BASAPPA CIRCLE,  
S.R. ROAD, V.V. PURAM,  
BANGALORE-560 004.

SINCE DECEASED BY LR'S

2. (A) SMT.H.D.VENKATESHAMMA  
W/O LATE. D. KRISHNAMURTHY,  
AGED ABOUT 70 YEARS,



2. (B) SRI.D.SRINIVAS  
S/O LATE D KRISHNAMURTHY,  
AGED ABOUT 48 YEARS,

2. (C) SMT.D.CHAMUNDESHAWARI,  
D/O LATE D. KRISHNAMURTHY,  
AGED ABOUT 46 YEARS,

2.(D) SMT.D. ESHWARI  
D/O LATE D. KRISHNAMURTHY  
AGED ABOUT 44 YEARS

2.(E) SMT.D.JAGADEESHWARI,  
AGED ABOUT 42 YEARS,

ALL ARE RESIDING AT  
NO.256 (OLD NO.56)  
HOMMADEVANAHALLI  
(OPP-PIPE FACTORY GODOWN)  
C.K. PALYA ROAD, GOTTIGERE  
BANNERAGATTA ROAD CROSS,  
BEGURHOBLI,  
BANGALORE-560086

...RESPONDENTS

(R(1)(A) TO R(1)(C) ARE SERVED AND UNREPRESENTED  
VIDE ORDER DATED 07.02.2025  
NOTICE TO R(2)(A) TO R2(E) IS HELD SUFFICIENT)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED  
ORDER DATED 10.12.2015 PASSED BY THE TRIAL COURT PASSED  
ON THE MEMO DATED 27.11.2015 FILED BY THE DEFENDANTS IN  
O.S.6399/2005 AT ANNEX-J AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN  
'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE C.M. POONACHA



**ORAL ORDER**

1. The present writ petition is filed calling in question the order dated 10.12.2015 passed in O.S. No.6399/2005 by the XXXIX Additional City Civil Judge, Bengaluru City<sup>1</sup>.

2. The relevant facts in a nutshell are that the deceased plaintiff<sup>2</sup> instituted a suit in O.S. No.6399/2005 for declaring that the alleged Sale Deed dated 28.03.1994 purportedly executed by defendant No.2 in favour of defendant No.1 is null and void and not binding on the plaintiff and for a permanent injunction restraining defendant No.1 from alienating the suit property. The defendants who are the respondents herein entered appearance in the suit and contested the same. The Trial Court by its judgment and decree dated 17.09.2009 dismissed the suit. Being aggrieved, the petitioners preferred RFA No.1329/2009. This Court vide judgment dated 21.1.2015 allowed the appeal and remanded the matter to the Trial Court. Consequent to remand, the plaintiff/petitioners filed I.A. No.3 under Order VI Rule 17 r/w Section 151 of Code of Civil

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<sup>1</sup> Hereinafter referred to as 'Trial Court'

<sup>2</sup> whose legal representatives have been brought on record as the petitioners in the present writ petition



Procedure, 1908<sup>3</sup> to amend the plaint seeking for a declaration that the plaintiff was the absolute owner of the suit property and also seeking for possession of the suit property. Vide order dated 06.11.2015, the Trial Court allowed I.A.No.3 and permitted the plaintiff to amend the plaint. Consequent to the amendment of the plaint, the plaintiff filed valuation slip along with the Court Fee on the additional relief sought for by virtue of the amendment. The same was objected to by the defendants and objection by way of memo was filed contending, *inter alia*, that the plaintiff ought to value the suit as on date of the amendment application. The Trial Court by order dated 10.12.2015 upheld the objections by the defendants and directed the plaintiff to file fresh valuation slip by valuing the additional relief of declaration and possession on the basis of the market value of the property as on the date of the filing the application and pay necessary Court fee. Being aggrieved, the plaintiff has filed the present writ petition

3. Heard submissions of learned counsel Sri K. Anand Shetty for the petitioners. Respondents are served and unrepresented.

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<sup>3</sup> Hereinafter referred to as the 'CPC'



4. Learned counsel for the petitioners vehemently contends that the application for amendment of the plaint having been allowed vide order dated 06.11.2015, the amendment relates back to the date of presentation of the plaint and hence, the plaintiff was justified in valuing the additional relief sought for by virtue of the amendment as of date of the value of the suit property as on date of the suit.

5. It is forthcoming that the plaintiff filed the suit on 24.08.2005. Subsequently, consequent to the remand, the plaintiff filed I.A. No.3 for amendment. Vide I.A. No.3, the plaintiff sought for an additional relief of declaration and title as well as for possession of the suit property. I.A. No.3 was allowed vide order dated 06.11.2015.

6. It is settled proposition of law that when an application for amendment is allowed, the said amendment relates back to the date of the suit, unless specifically ordered to the contrary. The Hon'ble Supreme Court in the case of ***Sampath Kumar Vs. Ayyakannu and another***<sup>4</sup> relied upon by the learned counsel for the petitioner has held as follows:

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<sup>4</sup> 2002 AIR SCW 3925



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*"10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed."*

*(emphasis supplied)*

7. The Trial Court vide order dated 06.11.2015 allowed IA.No.3 for amendment. However no specific order was passed that the amendment would come into effect either from the date of the suit or from the date of the application. Having regard to the position of law as held by the Hon'ble Supreme Court in the case of **Sampath Kumar<sup>4</sup>**, the amendment would relate back to the date of the suit.

8. It is also relevant to note that Section 7 of the Karnataka Court Fees and Suits Valuation Act, 1958, stipulates that the market value of a property shall be determined as on the date of the presentation of the plaint.



9. The Trial Court while upholding the objections putforth on behalf of the defendants has recorded a finding that the application for amendment was filed in the year 2015 and there being no order that the amendment relates back to the date of suit or the date of the application, the Trial Court opined that the plaintiff was liable to pay Court Fee on the market value as on the date of the application. The said finding of the Trial Court is contrary to the settled proposition of law as laid down by the Hon'ble Supreme Court in the case of **Sampath Kumar** as noticed above.

10. An application for amendment of the plaint having been filed and the said application having been allowed, the amendment relates back to the date of the suit and hence, the plaintiff is required to pay the Court fee on the additional relief sought for vide I.A. No.3 by valuing the suit property vis-a-vis the relief sought for as on the date of the plaint. The reasoning of the Trial Court is *ex-facie* erroneous and is liable to be interfered with and the relief sought for by the petitioner in the present writ petition is liable to be granted.

11. In view of the aforementioned, the following:





**ORDER**

- i) The writ petition is allowed.
- ii) The order dated 10.12.2015 passed in O.S. No.6399/2005 by the XXXIX Additional City Civil & Sessions Judge, Bengaluru City directing the plaintiff/petitioners to file a fresh valuation slip by valuing the additional relief of declaration and possession on the basis of the market value of property as on date of the filing of the application and pay necessary Court fee is set aside.
- iii) The plaintiff/petitioners is permitted to file a fresh valuation slip by valuing the additional relief of declaration and possession on the basis of the market value of the property as on date of the suit and pay necessary court fee, within two weeks, if not already done.

**Sd/-  
(C.M. POONACHA)  
JUDGE**