

IN THE HIGH COURT OF KARNATAKA, AT BANGALORE

DATED THIS THE 10<sup>TH</sup> DAY OF FEBRUARY 2014

BEFORE

**THE HON'BLE MR.JUSTICE H.BILLAPPA**

W.P.No.22538/2012 (GM-CPC)

BETWEEN:

1. M.S.Latha,  
W/o.Late M.P.Siddartha,  
Aged about 45 years.

2. M.S.Chandrashekara @ Ashrith,  
Aged about 22 years.

3. M.S.Akshatha,  
Aged about 18 years,

Petitioners 2 & 3 are the son  
& daughter of  
late M.P.Siddartha.

4. M.Panchaksharappa,  
S/o.Late Gurupadappa,  
Aged about 86 years,  
Occ:nil

Petitioners 1 to 4 are R/at.241/2,  
Siddeshwara Nilaya,  
IV Main Road, P.J.Extension,  
Davanagere – 577 002.

...PETITIONERS

(By Sri.M.K.Sripathi, Adv.,)

AND:

1. K.Channabasappa,  
S/o.Kallappa,  
Aged about 62 years,  
D.No.226, R.M.V.Extension,  
New B.E.L. Road,  
Bangalore.
2. Pushpa,  
D/o.Sri.Veerabhadrapa,  
Aged about 41 years,  
Household duties,  
Annehal,  
Chitradurga Taluk & District.
3. Shivarudramma,  
W/o.Late Shivakumaraiah,  
Aged about 55 years,  
Household duties, Chikkajajur,  
Holalakere Taluk,  
Chitradurga District.
4. Sujatha.B.  
D/o.Late Ajjapara Halappa,  
Holesirigere.  
Holalakere Taluk,  
Chitradurga District.
5. Shakunthala,  
W/o.Sri.Hanumanthappa Sankajji,  
Aged about 43 years,  
Household duties,  
Kothahal,

Holalakere Taluk,  
Chitradurga District.

6. L.Nalina,  
W/o.Lokeshappa,  
Aged about 39 years,  
Household duties,  
Kunagal,  
Holalakere Taluk,  
Chitradurga District.
7. Sathyanarayana,  
(father's name not known  
to the plaintiff)  
Aged about 50 years,  
Poultry Farm.
8. Udayalakshmi,  
W/o.Sri.Sathyanarayana,  
Aged about 47 years,  
Household duties,  
  
R7 & R8 are residing  
opp. Anjaneya Temple,  
Vidyanagar,  
Bangalore.
9. Ranganatha Deshpande,  
S/o.Late Shanubhoga Krishnarao,  
Aged about 45 years,  
Dikshit Road,  
Davanagere.
10. Hathimehaboob Sab,  
(father's name not  
known to the plaintiff)

D.No.1394/4, 8<sup>th</sup> Cross,  
K.T.J. Nagar,  
Davanagere – 4.

11. Kharapudi Lakshmana,  
(father's name not known  
to the plaintiff)  
Aged about 65 years,  
Agriculturist,  
15<sup>th</sup> Cross, 2<sup>nd</sup> Main,  
K.T.J.Nagar,  
Davanagere – 4.
12. State of Karnataka,  
Rep. by
  - a. The Chief Secretary,  
To the Government of Karnataka.
  - b. The Secretary,  
Ministry of Survey & Land Records,  
Government of Karnataka.
  - c. The Secretary.  
Ministry of Revenue,  
Government of Karnataka.
  - d. The Director,  
Land Survey and Settlement of the land,  
Government of Karnataka,  
  
(a) to (d) at Vidhana Soudha,  
Bangalore – 01.
  - e. The Deputy Director of Survey and  
Land Records,

Davanagere Sub-Division,  
Davanagere.

f. The Tahasildar,  
Davanagere Taluk,  
Davanagere.

13. M.P.Annapurnamma,  
W/o.M.Panchaksharappa,  
Aged about 81 years,  
Household Duties,  
R/at.241/2, Siddeshwara Nilaya,  
IV Main Road,  
P.J.Extension,  
Davanagere – 577 002.

...RESPONDENTS

(By Sri.S.Lakshminarayan, AGA for R12;  
R1 to 9, R13 Notice dispensed with vide  
Court Order dated 13.7.12;  
R11 served  
Sri.D.Nagaraj, Adv. for R10 -Absent)

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This writ petition is filed u/A. 227 of the Constitution of India, praying to quash the order dated 29.5.2012 on I.A.X vide Ann-G passed by the Learned Civil Judge (Sr. Judge) Davanagere in O.S.60/2007 and allow the application etc.,

This writ petition coming on for Preliminary Hearing in 'B' group day, the Court made the following:

**ORDER**

In this writ petition under Article 227 of the Constitution of India, the petitioners have called in question, the order dated 29.5.2012, passed by the Trial Court in O.S.No.60/2007 on I.A.No.10 vide Annexure-'G'.

2. By the impugned order at Annexure-'G', the Trial Court has rejected I.A.No.10 filed by the petitioners for amendment of the plaint by adding the proposed amendment.

3. Aggrieved by that, the petitioners have filed this writ petition.

4. Briefly stated the facts are:

The petitioners have filed suit in O.S.No.60/2007 for declaration, injunction and damages. At the stage of evidence, the petitioners have filed I.A.No.10 for amendment of the plaint by adding the proposed

amendment. The Trial Court by its order dated 29.5.2012 has rejected I.A.No.10. Therefore, this writ petition.

5. The learned counsel for the petitioners contended that the impugned order cannot be sustained in law. He also submitted that the Trial Court has erred while rejecting I.A.No.10. Further he submitted that the proposed amendment does not change the nature of the case and it is only amplification of the existing pleadings. He also submitted that the petitioners have pleaded that the respondents 1 to 8 are using 'ABCD' area as shown in 'D' schedule and the respondent No.11 has encroached upon the land in Sy.No.56/3A and the proposed amendment only amplifies the existing plea and therefore, the impugned order cannot be sustained in law.

6. As against this, the learned AGA submitted that the dispute is between the contesting parties.

7. There is no representation on behalf of the respondents.

8. I have carefully considered the submissions made by the learned counsel for the petitioners. I find considerable force in the submission of the learned counsel for the petitioners. The suit in O.S.No.60/2007 has been filed by the petitioners for declaration, injunction and damages. The petitioners have pleaded in the plaint that the respondents 1 to 8 are using 'ABCD' area shown in 'D' schedule in Sy.No.56/3A1 and 54 situated at Pamenahally village, Davanagere taluk and the respondent No.11 has encroached upon the plaintiff's land in Sy.No.56/3A. Now, the petitioners want to amend the plaint by adding the proposed amendment to the effect that the respondents 1 to 11 have collectively encroached 'ABCD' area shown in 'D' schedule and using it as road though there is no existence of road and the encroachment was made by the respondents 1 to 8 in the first instance and thereafter, the



respondents 9 to 11 also have continued to use 'ABCD' area in 'D' schedule. The proposed amendment does not change the nature of the case. It is only amplification of the existing pleadings. The trial has just begun. Therefore, the impugned order cannot be sustained in law.

Accordingly, the writ petition is allowed and the impugned order passed by the Trial Court in O.S.No.60/2007 on I.A.No.10 vide Annexure-'G' is hereby set-aside. I.A.No.10 is allowed and the petitioners are permitted to amend the plaint by adding the proposed amendment as prayed in I.A.No.10. The respondents can file their additional written statement.

**Sd/-  
JUDGE**

Bss.