

**IN THE COURT OF THE V ADDL. CITY CIVIL
JUDGE, AT BANGALORE CITY.
(CCH-13)**

DATED THIS THE 8th DAY OF AUGUST, 2016

PRESENT

**Sri.Muhammed Khan .M. Pathan
B.Com., LL.B.(Spl), LL.M.(Business Law)
V ADDL.CITY CIVIL & SESSIONS JUDGE
BANGALORE**

O.S.NO.1797/2014

**Plaintiff: Smt.V.Vijayalakshmi
W/o Sri.V.Ramachandraiah
Aged about 61 years, r/at
No.885, 18th main,
5th Block, Rajajinagar,
Bengaluru-560 010.**

/vs/

Defendants:

- 1. Mirle Varadaraju
Father's name not known
Major in age
r/at No.544, 5th main,
Kengeri Satellite Town,
Bengaluru-560 060**
- 2. V.Nagaraju
S/o Venkatalakshmaiah
Aged about 48 years, r/at
No.4, Vaddarapalya village,
Kengeri Post,
Bengaluru-560 060.**
- 3. N.R.Nagaraju
S/o Late K.Ramegowda
Aged about 44 years, r/at
Hanumanthanagar,
Nelamane Post,
Srirangapatna Taluk,
Mandya District.**

ORDERS ON I.A. NO.IX

The 2nd defendant has made an application under Order VI Rule 17 R/w Section 151 of Code of Civil Procedure for amendment of written statement, to include para No.9(a) to 9(e) in the written statement.

The application is supported by the affidavit of 2nd defendant, V.Nagaraju stating that the plaintiff has filed the suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The 2nd defendant is in rightful possession and enjoyment of the suit schedule property as absolute owner by virtue of registered sale deed and plaintiff is interfering unnecessarily by virtue of illegal documents. The plaintiffs have not stated in their pleadings despite the knowledge of unlawful and illegal transaction and correspondence between the society and competent authority. He has not given instructions to his advocate at the time of filing the written statement since the documents were obtained

subsequent to filing of the written statement. Hence, to avoid multiplicity of proceedings, the proposed amendment is very much necessary and essential for giving decision in this case. The amendment sought for will not change the nature of the suit or it will not create any new case. Hence, prays to allow the application.

3. The plaintiffs have filed detailed objections contending that he purchased the site No.84, old Khata No.199/84, New No.1060 situated at Pattanagere village, Kengeri Hobli, Bangalore South Taluk, now known as BHEL layout from one M.S.Sreedevi, who in turn has purchased the same from REMCO (BHEL) House Building Co-operative Society Ltd., under a registered sale deed dated 04/12/1992 and thereafter, the plaintiff has purchased the same and she is in possession and enjoyment of the same. The 2nd defendant in collusion with the 1st defendant might have created the alleged

document to knock off the schedule property. The plaintiff further states that she is not aware of any Civil Appeal No.7425-26/2002 C/w 774-718/2005 between the Bangalore City Co-operative Housing Society Ltd. V/s State of Karnataka and she not party to the proceedings and the same is not binding on her. The proposed amendment is highly belated and it changes the nature and character of the defence. If the proposed amendment is allowed, the plaintiff will be put to untold hardship and great injustice. Hence, prays for dismissing the application.

4. Having heard the learned counsel, the following points arise for my consideration;

1. Whether the application filed by the 2nd defendant seeking permission to amend the written statement by inserting para 9(a) to 9(e) as per the proposed amendment deserves to be allowed?
2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1** : In the present case, the proposed amendment sought for by the 2nd is to include para No.9(a) to 9(e) in his written statement. The proposed amendment is with regard to claiming his ownership in Sy.No.42/3B and possession allotted by Remco (BHEL) Housing Building co-operative Society Ltd. Further, the applicant has sought for amendment to the effect that Hon'ble Apex Court in Civil Appeal Nos.7425-26/2002 c/w 774-718/2005 has defined the status of the unauthorized allottees by unlawful societies and further the amendment is sought with regard to the proceedings pertaining to the BHEL society.

7. The plaintiff has unnecessarily interfered by virtue of the legal documents despite the fact of unlawful and illegal transactions between the society and the competent authority. The amendment is required to establish the conduct of the plaintiff. The amendment sought will not change the nature of the suit or it will not create any new case.

8. The plaintiff has opposed the amendment on the ground that plaintiff has purchased the site No.84, old khata No.199/94, New No.1060, situated at Pattanagere village, Kengeri Hobli from one M.S.Sreedevi who had purchased the same from Remco (BHEL) House Building Co-operative Society on 04/12/1992 and eversince she was in possession and enjoyment of the same, the plaintiff has purchased the property and she is in possession of the property. The proposed amendment sought is highly belated. The averments of the applications made out in para No.(a) are all denied as false and

the proposed amendment sought for by the defendant is liable to be dismissed.

9. Both the learned counsel for the parties to this application have addressed their arguments in the line of the application and objections filed therein.

10. I have perused the records. The defendant No.2 claims to be owner in Sy.No.42/3B and the Remco(BHEL) has no nexus with the Sy.No.42/3B. The defendant is the owner of the said property and the applicant has sought for the amendment with regard to the Hon'ble Apex Court order in Civil Appeal No.7425-26/2002 C/w 774-718/2005 and the status of the unauthorized allottees is held by the Supreme Court. The defendant had taken up contentions in the amended statement with inconsistent pleas. However, in the present case, the defendant has sought to amendment to the written statement contending that he is the owner in

possession of Sy.No.42/3B and the society has no interest in the said property of the defendant. This is the matter to be decided in the trial. At this stage of the matter, the proposed amendment sought for is necessary to decide the real controversy between the parties. The plaintiff's suit is for bare injunction simplicitor. The question of possession of the plaintiff is a matter to be considered in the suit, but as far as the directions of the Hon'ble Apex Court referred above is to be considered as to allotment of the sites as contended in the application in the light of the decisions of the Hon'ble Apex Court, the proposed amendment sought for in the written statement is necessary and proper for adjudication of the matter. Therefore, I am inclined to allow the application by imposing necessary costs. Accordingly, I answer point No.1 in the Affirmative.

11. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

I.A. No.IX filed by the defendant No.2 under Order VI Rule 17 R/w Section 151 of Code of Civil Procedure to amend the written statement by adding para No.9(a) to 9(e) is hereby allowed subject to payment of cost of Rs.500/-.

(Dictated to the Judgment Writer directly on computer typed by her, corrected and then pronounced by me in open court this the 8th day of August, 2016).

**(Muhammed Khan .M. Pathan)
V ADDL.CITY CIVIL JUDGE;
BANGALORE**