

KABG040009252018



25.01.2024

O.S.No.463/2018

ORDER ON I.A NO.XIII

This application is filed at the stage of further evidence of defendant. This application is filed U/O. VI Rule 17 R/w. Sec.151 of C.P.C. by the defendant seeking for amendment of the written statement as described in the schedule of amendment.

Schedule of Amendment

“After the para No. 4 of Written Statement filed by the defendant, the proposed amendment para No.4(A) may kindly be added.

4A) As stated above, the plaintiffs predecessors by name Shri. Kallappa Mahadev Patil while executing the Agreement of Sale dated 28.01.1981 in favour of the defendant by receiving consideration amount of Rs. 10, 150/- as in part performance of the said contract has delivered the actual vacant possession of the suit property to defendant and since then the defendant has been in actual possession of the suit property in part performance of the above said agreement of sale dated 28.01.1981 and he has performed his part of the contract by paying entire consideration amount, the defendant's actual possession of the suit property is protected U/Sec.53(A) of Transfer of Property Act and the plaintiffs are not entitled to the

relief of permanent injunction or any other relief against the defendant, other than what is provided in the terms and conditions of the contract (Agreement of Sale dated 28.01.1981)."

2. In the affidavit annexed to the application, the applicant/defendant has stated that the plaintiff has filed this suit against him for the relief of permanent injunction. He has filed his detailed written statement and contested the matter. The suit property is R.S. No. 22/2 measuring 07 Gunthas corresponding to Gram Panchayath property No. 1/A situated at Kangrali K.H. Belagavi District. It is further stated that in para No. 4 of his written statement, he has already pleaded that the grandfather of plaintiffs by name Shri. Kallappa Mahadev Patil to meet out his domestic difficulties had sold the entire agriculture land bearing R.S. No. 22/2 measuring 07 Gunthas situated at Kangrali K.H., Belagavi District in his favour by receiving the entire sale consideration amount of Rs. 10,150/-. Accordingly, on 28.01.1981 Shri. Kallappa Mahadev Patil after receiving the entire sale consideration amount of Rs. 10,150/- had executed an agreement of sale in his favour and handed over the actual possession of the suit land in his favour and from the said day he is in lawful possession of the above said suit property and by constructing house therein he is enjoying the same. The proposed amendment is only explanatory in nature about the defence which has been already laid foundation in para No.4 of his written

statement. Therefore, the nature of the defence will not be changed if the amendment application is allowed as sought and no prejudice will be caused to other side, if the application is allowed and on the contrary, he will be put to untold hardship, if the application is not allowed. Hence, prayed to allow the application.

3. Counsel for plaintiffs filed objections denying the contents of affidavit annexed to the application and contended that the present application is false, frivolous, vexatious and not maintainable in eye of law. The defendant has filed this application only to fill the lacuna and to overcome the admission given in cross-examination and as such the application filed at this belated stage is not maintainable. It is further stated that the defendant has absolutely failed to prove the prime facie case, the pleadings are very much silent why the delay and latches has been caused to file the present amendment application. Further on going through the amendment application after commencement of trial, the present application is not at all maintainable and deserves to be dismissed. The application is filed only with malafide intention to harass the plaintiffs and to drag the matter and as such the application is not maintainable. It is further stated that in Para No.4 of written statement has already pleaded the para No.4A and as such it is nothing but repetition to the pleadings and to overcome, the admission

given in the cross-examination. If this application is dismissed no loss or prejudice will be caused to defendant and on the contrary, they will put to untold hardship and loss. Hence prayed to dismiss the application.

4. Heard on both sides.

5. On the basis of rival contentions, the following points arise for my consideration:

1) Whether the applicant has made out grounds to allow this application?

2) What order?

6. My findings to the above points are as follows:

Point No.1: In the Affirmative,

Point No.2: As per final order for the following:

REASONS

7. **Point No.1** : This suit is filed for the relief of permanent injunction against the defendant. Defendant has sought for proposed amendment to his written statement. Per contra, the plaintiffs objected the amendment by filing their objections. Counsel for defendant relied upon **Raj Kumar Bhatia Vs. Subhash Chander Bhatia (2018) SCCR 138** wherein it has been held that "*Case which was sought to be set up in proposed amendment was an elaboration of what was stated in*

written statement and allowing amendment would not amount to withdrawal of an admission contained in written statement since amendment sought to elaborate upon an existing defence. Order passed by Trial Court allowing amendment of written statement is affirmed." He also relied upon **B. K. Narayana Pillai Vs. Parameswaran Pillai and another (2000) 1 SCC 712**, wherein it has been held that *"Amendment of pleadings should be permitted where it would result in solution of real controversy between parties, without altering original cause of action. Amendment cannot be claimed as a matter of right under all circumstances, but Court ought not to adopt hyper technical approach while deciding such prayers. Court's approach should be liberal particularly where any prejudice suffered by the other side can be compensated by cost."* He also relied upon **Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others (2007) 5 SCC 602**, wherein it has been held that *"Addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in written statement can be allowed as long as the amended pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely."* He also relied upon **Rajesh Kumar Aggarwal and others Vs. K. K. Modi and others AIR 2006 SC 1647** wherein it has been held that *"The object of the rule is that Courts should try the merits of the case that come before them and should, consequently,*

allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Order VI Rule 17 consists of two parts, whereas the first part is discretionary and leaves it to the Court to order amendment of pleading. The second part is imperative and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.” He also relied upon **L. Ashwini and another Vs. H. Laxmi Narayan and others 2015(2) Kar. 571** wherein it has been held that “*Amendment application has to be construed liberally and cannot be rejected on hyper technicalities nor procedural aspects.*” He also relied upon **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. and others (2018) SCCR P.29** wherein it has been held that “*In considering amendment applications, Court should adopt liberal approach and amendments are to be allowed to avoid multiplicity of*

litigations. Mere delay is not a ground for rejecting amendment."

8. Under Order VI Rule 17 of C.P.C, Courts discretion to grant permission for a party to amend his pleading can be exercised, firstly, where no injustice is done to other side and secondly, the amendment being necessary for the purpose of determining the real question in controversy between the parties also keeping in view the proviso under Rule 17 of Order 6 of C.P.C. Even after commencement of the trial, the amendment can be permitted, if it is shown that in spite of due diligence, the applicant could not have raised the matter, earlier to the stage of commencement of the trial.

9. The suit is filed for the relief of permanent injunction against the defendant. In the present suit, the amendment sought by the defendant is to explain his defence and he is not introducing any new case/defence. On perusal of written statement, the amendment sought by the defendant is permissible as he stated in the paragraph No.4 of the written statement that the grandfather of present plaintiffs has sold the property in his favour and has handed over the actual possession of the suit land. The proposed amendment is sought only to seek shelter U/Sec.53(A) of Transfer of Property Act. Defendant can take inconsistent pleas but the burden of proving of such pleas always lies upon him. Further the amendment

sought in the application do not change the cause of action, nature of suit and the relief claimed and defendant is bound to prove his contentions by adducing cogent evidence. The amendment sought is the continuation of the contentions pleaded in the written statement and no new case is introduced by the defendant. Further the rulings relied by the counsel for defendant are aptly applicable to the case on hand as the amendment in the present application is also an elaboration of what was stated in written statement and the applications for amendment to be construed liberally. The proposed amendment does not take away any right accrued to the plaintiffs. As such in order to avoid multiplicity of proceedings and for proper adjudication of the matter in controversy, I answered Point No.1 in the Affirmative.

10. Point No.2 : For the above said reasons to point No.1, I proceed to pass the following:

ORDER

The application filed U/O.VI Rule 17 R/w. Sec.151 of C.P.C. by the defendant is hereby allowed.

Counsel for defendants is directed to carry out the amendment and to file amended written statement.

**Prl. Civil Judge & J.M.F.C.,
Belagavi.**

O.S.No.463/2018

Call on 05.02.2024.

**Prl. Civil Judge & J.M.F.C.,
Belagavi.**