

ORDERS ON I.A.NO.IV

The defendants filed I.A.No.IV U/o. VI Rule 17 of CPC praying to permit them to amend the written statement as detailed in schedule of amendment in order to make the pleadings more precise in the ends of promoting justice and equity.

2. In the affidavit, defendant no. 7 stated that he is seeking amendment to the written statement which is very much important to decide the matter on merits and to make the written statement more precise. The schedule of amendment is not in any way contradictory to the previous pleadings and not in any way changing the nature of the present suit. The amendment sought is necessary to decide the real issues between the parties. If the application is allowed, no loss or prejudice will be caused to the plaintiff. With these contentions, the defendants prayed to allow the application.

3. The plaintiff filed objections to the application, contending that the accompanying application is false and frivolous and the contents set out in the affidavit are not true and correct. The proposed amendment will change the nature of the defense which has been made out by the defendant. Already the trial has been begun, therefore, amendment is not permissible in law and the application is liable to be rejected. The proposed amendment will

change the original defense taken in written statement and the defendant want to prolong the litigation on one or the other pretext. Therefore, the application is filed with an oblique intention to obstruct the trial of the suit. With these contentions the plaintiff prayed to reject the application.

4. Heard. In support of their application the defendants relied on the Judgment reported **State of Madhya Pradesh Vs. Union of India and another (2011) 12 SCC 268**, wherein the Hon'ble Supreme Court held that "amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule, particularly in cases where other side can be compensated with costs. It is also held that normally, amendments are allowed in pleadings to avoid multiplicity of litigation. Where application is filed after commencement of trial it must be shown that in spite of due diligence such amendment could not have been sought earlier.

5. Perused the records.

6. Now, the points that arise for consideration are as under;

1. Whether defendants have made out grounds to allow the application?
2. What order?

7. Answer to the above points are as under;

Point No.1: In the Affirmative

Point no.2: as per the final order for the following

REASONS

8. **Point No.1:** The plaintiffs have filed this is suit for declaration and injunction and the case is at the stage hearing on preliminary issues, at this stage, the defendants have filed this application praying to permit them to amend the written statement and insert Para No. 1A to 1B and 9A & 9B. On perusal of the proposed amendment the defendant has already taken contentions with respect to the documents executed in favour of mother of plaintiff. Now the defendants are trying to elaborate the contentions already taken in the written statement. The plaintiff objected to the application stating that, the proposed amendment will change the nature of defense which is already taken by the defendant in the original written statement. The defendants have already taken contentions with respect to execution of agreement and rectification agreement in the written statement. Now the defendants are explaining about the order of land tribunal and also the agreement executed in favour of mother of plaintiff. The defendants are not trying to insert new facts in the written statement. Therefore, liberal approach has to be taken in considering this application.

9. Further, on perusal of the entire records, though the issues have been framed but evidence is not yet commenced. In the circumstances, if the proposed amendment is allowed, plaintiff will not be put to hardship. Further if the defendant has taken the proposed amendment to the written statement the plaintiff has every opportunity to disprove the contentions taken by the defendant.

Therefore, at this stage the defendants have made out grounds to allow application. Hence, **I answer point no.1 in Affirmative.**

10. **Point no.2**: In view of the discussion on point no.1 and for the reasons stated therein this court proceed to pass the following:

ORDER

**I.A.No.4 filed by the defendants U/o.
VI Rule 17 of C.P.C is hereby allowed.**

**The defendants are permitted to
amend the written statement.**

**For amendment and amended
written statement. Call on 10.07.2024**

Sd/-
**IV Addl. Civil Judge & JMFC,
Belagavi.**