

Order Sheet
In the Court Of: PRL. CIVIL JUDGE AND JMFC BELAGAVI
AT BELGAUM
F.R.No:O.S./1345/2014
Case Reg.No: O.S./1339/2014

Plaintiff

V E R S U S

Defendent

**1)Shri. Balkrishna So. Duddappa
Muchandi @ Muchandikar &3 others**

**1)Shri. Jotiba @ Jyoti So. Bhimsu @
Bhima Santaji &6 others**

**2)Shri. Piraji So. Duddappa
Muchandi @ Muchandikar**

**2)Smt. Krishnabai Wo. Jotiba @ Jyoti
Santaji**

**3)Smt. Laxmibai Wo Duddappa
Muchandi @ Muchandikar**

3)Shri. Bhima So. Jyoti Santaji

4)Shri. Krishna So. Jyoti Santaji

5)Shri. Fakira So. Jyoti Santaji

6)Smt. Laxmibai Wo. Ningani Santaji

Orders on I.A.No.3

Plaintiff has filed this suit seeking the relief of declaration declaring that the plaintiffs are in actual possession of the schedule A and B properties and for consequential relief of perpetual injunction restraining defendant No.1 to 5 from disturbing the lawful possession of plaintiffs over the suit schedule property. When the matter was set down for cross examination of PW.1 defendant No.1 has filed I.A.No.3 U/O 6 Rule 17 R/w Section 151 of CPC to amend his written statement.

In the affidavit accompanied to the application it is sworn that the plaintiffs have taken contention that they may be declared as owner of the suit properties on the basis of the alleged sale deed dated 22-2-1955 and according to defendant No.1 the alleged sale deed is a created and sham document. By this application the defendant No.1 proposes to amend the following:

“On page No.7, after paragraph No.15 the following paragraph may kindly be impleaded.

15A. It is submitted that, the deceased Balappa i.e. grand father of the plaintiffs has created false, bogus and sham document i.e. alleged sale deed behind the back of the defendant No.1 on 22-9-1955 and taking the undue advantage of said alleged illegal sale deed, the plaintiff are colluding with the revenue authorities and got mutated their names. Hence, the alleged sale deed dated 22-9-1955 is not binding upon this defendant No.1.”

Plaintiff has filed objection to I.A.No.3 contending that I.A.No.3 is barred by Law of Limitation and the written statement was filed in the year 2012 and after lapse of 5 long years now defendant No.1 seeks for amendment of his written statement.

Heard the learned counsel for the parties and perused the materials placed on record.

Following points arise for my consideration.

1. Whether I.A.No.3 filed U/O 6 Rule 17 R/w Section 151 of CPC by defendant No.1 deserves to be allowed?

2. What order?

My findings for the above points are as under:

Point No.1 : In the affirmative

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

REASONS

Point No.1:- Admittedly by both the parties suit is one for the declaration and perpetual injunction declaring that the plaintiffs are the absolute owners in possession of schedule A and B properties and for the relief of perpetual injunction.

Shri.A.L.Sandrimani learned counsel appearing on behalf of the defendant No.1 during the course of his argument submitted that defendant No.1 is age old person aged 93 years and he has lost his memory. Now he recalculated that the plaintiffs are seeking declaration as owners and seeking possession of the suit property by virtue of the sale deed dated 22-2-1955 and though the amendment sought by the defendant is at a belated stage but due to the loss of memory by the 1st defendant the delay is caused and there is no intentional delay in filing the application for amendment and he further

submitted that if the present I.A. is allowed no hardship would be caused to the other side. With these submissions he prayed for allowing I.A.No.3.

Shri.K.B.Hannurkar learned counsel appearing on behalf of the plaintiff submitted that the defendants have filed written statement in the year 2012 and after delay of 5 long years they have come up with application U/O 6 Rule 17 R/w Section 151 of CPC for amendment of their written statement and he further denied that defendant No.1 is an innocent person and he had lost his memory etc., and it is further submitted by counsel for plaintiffs that if the proposed amendment is allowed then it would change the nature of the suit property and cause of action. With these submissions he prayed to dismiss the application.

Having heard the learned counsel for respective parties and on perusal of materials placed on record what transpires is plaintiffs are claiming possession over the suit property by virtue of the sale deed dated 22-9-1955 and the defendant wants to amend his written statement by inserting that the sale deed was obtained behind the back of defendant No.1 and in collusion of the revenue authorities. It is settled principle of law that amendment of written statement should be liberally considered as against the amendment of plaint. As such, amendment of written statement stands on higher footing than amendment of plaint. Hon'ble Apex Court in a decision reported in AIR 1968 SC 1165 has held that mere delay and lapse in making an application for amendment is not a ground for refusal of the amendment. The amendment is a discretionary matter. As a matter of fact, the Court must lean in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed can be compensated by costs or otherwise and it was further held that all amendments ought to be allowed which satisfy the two conditions. (a) not working injustice to the other side, (b) of being necessary for the purpose of determining the real questions in controversy between the parties.

In the present case on hand the amendment which the defendant No.1 is seeking to introduce does not change the nature of the suit property nor the cause of action. By the proposed amendment the defendant only wants to insert that the sale deed dated 22-9-1955 is a created and sham document and it was obtained behind his back. Therefore the contention of the plaintiff that I.A.No.3 is barred by limitation do not hold water at this stage. Considering the delay in filing I.A.No.3 by defendant No.1, plaintiffs can be compensated by way of costs. In order for final and conclusive adjudication of the matter I am of the opinion that I.A.No.3 deserves to be allowed. Hence, point No.1 is answered in the affirmative and in favour of the defendant No.1.

Point No.2:- For the reasons stated in point No.1, following order is passed.

Order

I.A.No.3 filed by the defendant No.1 is hereby allowed.

Defendant No.1 is hereby permitted to amend his written statement only to the extent sought for in I.A.No.3.

Defendant No.1 shall furnish the amended copy of written statement to the Court and to the other side on or before the case date of hearing.

Considering the delay defendant No.1 shall pay cost of Rs.500/- to the plaintiff.

For furnishing amended written statement call on 24-3-2017.

sd/-
IV Addl.CJ, Belagavi