

KABG040039092017



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC,
Belagavi.

DATED THIS THE 12TH DAY OF MARCH-2025

ORIGINAL SUIT NO.1183/2017

PLAINTIFF :

1)	Shri. Chambayya S/o. Siddappa Burlakatti, Age : 56 years, Occ : Agriculture, R/o : At : Rajhunsgad, Post : Nandihal, Tq/District : Belagavi.
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Vs.

DEFENDANT :

1)	Shri. Basvant S/o. Jyotiba Lokhande, Age : 50 years, Occ : Agriculture, R/o : At : Rajhunsgad, Post : Nandihal, Tq/District : Belagavi.
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PARTIES TO I.A.NO.X**Applicant/Defendant :**

1)	Shri. Basvant S/o. Jyotiba Lokhande.
	(By Shri. A. P. Misale, Adv.)

Vs.**Opponent/Plaintiff :**

1)	Shri. Chambayya S/o. Siddappa Burlakatti.
	(By Shri. A. A. Mulwadmat, Adv.)

1.	Provision under which application is filed	U/O.VI Rule 17 R/w. Sec. 151 of CPC
2.	Relief sought for	Amendment of written statement
3.	The date on which the application is filed	18.04.2024
4.	Number of application	X
5.	The date on which the objections are filed by different opponent	31.07.2024
6.	The date on which the orders were passed on the said application.	12.03.2025

**ORDERS ON I.A.NO.X FILED BY DEFENDANT
UNDER ORDER VI RULE 17 R/W. SEC.151 OF
CODE OF CIVIL PROCEDURE**

This application is filed U/O.VI Rule 17 R/w. Sec.151 of C.P.C. by the defendant seeking amendment of written statement as stated in the application. Defendant has sought to amend the written statement as follows :

I) In page No.2 at para No.2 of the written statement to add the following paragraph as Para No.2(a).

'2(a) The description of the suit property shown in the para No.1 of the plaint, is absolutely vague and incorrect. This defendant is specifically denying the same in toto. The description is absolutely contradictory to the allegations made out in the para No.4 of the amended plaint. That the plaintiff is well aware that at the time of filing of above suit one Shri. Satish S/o. Basavant Tamunche is in possession of property measuring East-West 70 feet X North-South 16 feet, out of said Sy. No.53 of Rajhansgad village, Sulage (Yellur), Tal : & Dist : Belagavi. He is in possession of the suit property and made construction threat. It is submitted that the plaintiff has very well knows about possession of Shri. Satish S/o. Basavant Tamunche, even though the reasons known to him he has not given correct specification or details of the suit property and trying to mislead this Hon'ble Court, by showing suit

property entirely as 53 at para No.1 under description of suit property as well as at para No.4. Hence, the plaintiff be put to strict proof of the description of suit property, which alleged to be trespassed by this defendant. In view of giving a false and incorrect description of suit property, the suit of the plaintiff is not maintainable and deserves to be dismissed.'

II) To delete the word 'present plaintiff' in Para No.9 of the written statement at line 5-6 and to add the word 'Shri. Maruti Sidappa Tavase' in its place.

III) To delete the date in paragraph No.9 at opening line No.8 i.e., '08.11.2007' and to add '08.11.2010' in its place.

IV) In Paragraph No.9 of the written statement to add the following paragraph as Para No.9(b).

'9(b) It is submitted that the plaintiff is well aware at the time of filing of above suit that one Shri. Satish S/o. Basavant Tamunche is in actual, physical possession of property measuring East-West 70' X North-South 16', totally 1120 Sq.Ft., under said Sy. No.53 of Rajhansgad village, Sulage (Yellur), Tal : & Dist: Belagavi, by virtue of sale deed dated 08.11.2010 and he is in possession and making wahiwat of the same by constructed building thereat for the shelter of domestic animals and also for storing grass and agricultural equipment's also for his residence

etc. However, at para No.4 of the plaint the plaintiff himself falsely alleged that the defendant has made illegal construction based on the illegal and concocted document styled as Sale Deed dated 28.04.2007 and also averred that the defendant has got created the said sale deed in his favour etc. The plaintiff be put to strict proof of the same. However, the reasons best known to the plaintiff, he has arrayed the present defendant as party to this suit instead of its owner and possessor Shri. Satish S/o. Basavant Tamunche at the time of filing of this suit. The present defendant is the relative of said Shri. Satish S/o. Basavant Tamunche. Hence, the suit of the plaintiff in present form is not maintainable as it is hit by non-joinder of necessary party and mis-joinder of party. Even, on the pleadings made out at para No.4, the plaintiff has not sought either declaratory relief in regards to alleged allegations made out in the para No.4 or all other available reliefs connected thereto and hence suit is hit by the Order II Rule 2 of C.P.C. and Sec.34 of Specific Relief Act. Hence, the suit of the plaintiff is not maintainable and deserves to be dismissed on this ground.'

V) In Paragraph No.8 at Page No.4 of the written statement, to add the following paragraph as Para No.8(a).

'8(a) It is submitted that the valuation made at para No.7 and payment of Court fee is incorrect. The plaintiff is not in

possession of the suit property. Hence, the plaintiff has required to pay the Court fee on the market value of the suit property.'

'9(a) It is submitted that, in the above suit the plaintiff claiming relief in respect of entire Sy.No.53 measuring 2 Acre 14 Guntas of Rajhunsgad, Belagavi. The plaintiff and his brother sold the parts of the said land Sy.No.53 to the various purchasers and they are enjoying their respective purchased properties. The plaintiff with an ill-intention to harass the said purchasers filed similar type of original suits against them in various Courts and some of original suits were also dismissed against the plaintiff. The plaintiff has filed this suit to harass this defendant. The plaintiff has suppressed the material actual facts in respect of Sy. No.53 measuring 2 Acre 14 Guntas of Rajhunsgad, Belagavi and trying to mislead this Hon'ble Court by factually false, incorrect and misleading information. Hence, the suit of the plaintiff is liable to be dismissed for *suppressio-veri and suggestio-falsi*.'

2. In the affidavit annexed to the application, it is stated that the plaintiff has filed the present suit against the defendant seeking the relief of permanent injunction in respect of suit schedule property and now the case is posted for cross-examination of PW-1. That recently the defendant engaged the present counsel by obtaining NOC from the earlier counsel and during preparation for cross-examination it is noticed that some

facts relating to maintainability of suit need to be added in the written statement. That by oversight the said facts have not been added in the written statement earlier and hence the proposed amendment is very much necessary and it is based on earlier pleadings and hence it will not change the nature of suit or the defence taken by the defendant. The proposed amendment is not in the form of addition, alteration or substitution of new cause and if the same is allowed, no loss or hardship would be caused to the plaintiff. On these grounds, the defendant has prayed to allow the application.

3. Per contra, the plaintiff has filed objection to the said application on the ground that the defendant has no authority over the suit property since the suit property belongs to the plaintiff and that the defendant has no right, title, interest over the suit property. That since 1987 the plaintiff is the owner of suit property by virtue of registered sale deed and he has not sold the suit property to anybody and hence the question of defendant getting right over the suit property does not arise. On these grounds, the plaintiff has prayed to dismiss the present application.

4. On the basis of said application and objection, the following points arise for my consideration :

1) *Whether the applicant/defendant has made out grounds to allow the application?*

2) *What order?*

5. My answer to 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 :** This suit is filed for the relief of permanent injunction and mandatory injunction against the defendant restraining him from putting up any kind of construction in the suit property and from trespassing over the suit property and to direct the defendant to demolish illegal construction in the suit property. Now, the defendant is intending to amend the written statement by inserting the paragraphs mentioned above. But however, the plaintiff has filed detailed objection to the said application as narrated above.

7. Under Order VI Rule 17 of C.P.C., Court's 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 VI of

C.P.C. Even after commencement of the trial, the amendment can be permitted, if it is shown that inspite of due diligence, the applicant could not have raised the matter, earlier to the stage of commencement of the trial.

8. In the present suit, the plaintiff has sought the relief of permanent injunction and mandatory injunction against the defendant. When the case stood posted for further cross-examination of PW-1, the defendant has filed the present application seeking the proposed amendment to the written statement. If the proposed amendment is perused, it reveals that the defendant is intending to explain the facts already pleaded in his written statement and further he is intending to rectify the date of sale deed mentioned in Paragraph No.9. Further the defendant is intending to add one Paragraph regarding the Court fee and regarding his contention that the suit is bad for non-joinder of necessary party and regarding maintainability of the suit. The perusal of original written statement reveals that even in the said written statement the defendant has already pleaded regarding valuation of the suit and regarding maintainability of the suit. The defendant has also pleaded in his written statement regarding his contention that the plaintiff has sold the suit schedule property in favour of various purchasers. As such, the proposed amendment appears to be in the form of explanation to the facts already pleaded and the defendant is not intending to introduce any new

facts in his written statement, nor is he intending to withdraw any admissions already given in his written statement. So far as the rectification of date of a sale deed as stated in the written statement already is concerned, it is for the defendant to prove the same by placing cogent evidence in the course of trial.

9. The objection taken by the plaintiff to the said application that the defendant has no manner of right, title or interest over the suit property and that the plaintiff himself is the owner of suit property by virtue of sale deed since 1987, is a matter of trial and it cannot be adjudicated at this stage. The merits of amendment cannot be ascertained or discussed at this stage. The Hon'ble Apex Court in **Rajesh Kumar Aggarwal and others Vs. K. K. Modi and others reported in (2006) 4 SCC 385**, has held that the Courts should allow all the amendments that may be necessary for determining the real question in controversy between the parties and at the stage of considering the applications for amendment, the Court should not go into correctness or falsity of the case in the amendment, nor record a finding on the merits of amendment at the stage of considering the prayer for amendment. It is further held that if it was permissible for the applicant to file independent suit on the basis of amendment application, it should be considered why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit. Hence, in the

present case also the proposed amendment sought by the defendant deserves to be allowed. Hence, I answer **Point No.1 in the Affirmative.**

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

ORDER

The application i.e., I.A.No.X filed by applicant/defendant U/O.VI Rule 17 R/w. Sec.151 of C.P.C. is hereby allowed.

The defendant is hereby directed to carry out amendment and to file amended written statement.

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the **12th day of March-2025.**)

**(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC,
Belagavi.**