

IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.,
ATHANI AT: ATHANI.

Present: Jagadeesh Biserotti.,
B.A., LL.B.(Spl.).
Prl. Civil Judge and JMFC, Athani.

Dated this day 11th September, 2023.

O.S. No. 981/2016

1. Smt. Kalavati W/o.Bhimashi Chunar,
Age: 33 Years, Occ: Agriculture and H.H. Work,
R/o. Saptasagar, Tq: Athani, Dist: Belagavi.

(Plaintiff by learned Sri. K.H.A., Adv.)

...Plaintiff

V/s

1. Sri. Mahadevi W/oHaibatti Sanadi @ Talawar,
Age: 55 Years, Occ: Household work,
R/o. Khavatkoppa now at Satyapramod Nagar,
Athani, Tq: Athani, Dist: Belagavi and others.

(Defts No.1 to 3 Ex-parte,
Deft.No.4 by learned Sri.S.P.P.Adv.,
Deft.No.5 by learned Sri.M.R.N., Adv,)

....Defendants

I.A. No. V

1. Sri.Shrimant Bhimappa Koli and others.

.....Applicant/Defendant No.5

v/s.

1. Smt.Kalavati W/o.Bhimappa Chunar

....Opponent/Plaintiff

ORDER ON I. A. V FILED U/ORDER VI RULE 17 R/W.
SEC 151 OF C. P. C BY THE DEFENDANT NO.5

1. The learned counsel for the defendant No.5 has filed I.A. No. V U/order 6 Rule 17 R/w. Section 151 of C.P.C, seeking for amendment of the written statement as under,

ನಿಯೋಜಿತ ತಿದ್ದುಪಡಿ;

- 1) ಕೈಪಿಯತ ಪುಟ 2 ರಲ್ಲಿ ಪ್ಯಾರಾ ನಂ 4 ರಲ್ಲಿ 5 ನೇ ಸಾಲು ಕೊಣೆಗೆ ಸಹಿ ಮಾಡಿರುತ್ತಾಳೆ ಅಂತಾ ಇರುವಲ್ಲಿ "ಸಹಿ ಮಾಡಿರುವದಿಲ್ಲ" ಅಂತಾ ಹಾಗೂ
- 2) ಕೈಪಿಯತ ಪುಟ 3 ರಲ್ಲಿ ಪ್ಯಾರಾ ನಂ 7 ನೆಡ್ಡು ಮುಗಿದ ಮೇಲೆ ಮುಂದುವರೆದು " ಮತ್ತು ಸದರಿ ವಾದಿಯಳು ಸದರಿ ದಾವಾದಲ್ಲಿ ತನ್ನ ಹಾಗೂ ಪ್ರತಿವಾದಿ ನಂ 1 ರಿಂದ 4 ರವರ ಕುಟುಂಬಕ್ಕೆ ಇರುವ ಮನೆಯ ಆಸ್ತಿ ಅಥಣಿ ತಾಲುಕಾ ಪೈಕಿ ಸಂಕ್ರಟ್ಟಿ ಗ್ರಾಮ ಪಂಚಾಯತ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವ ಖವಟಕೊಪ್ಪ ಗ್ರಾಮದ ವಿ.ಪಿ.ಸಿ ನಂ.434/1 ನೆಡ್ಡು ಈ ದಾವೆಯ ಪ್ರತಿವಾದಿ ನಂ 2 ಮತ್ತು 4 ರವರ ಹೆಸರಿನಿಂದ ದಾಖಲಿದ್ದು ಅದನ್ನು ದಾವಾ ಆಸ್ತಿ ಮಾಡಿರುವದಿಲ್ಲ ಹಾಗಾಗಿ ಸದರಿ ದಾವೆಯು ಕಾನೂನು ಪ್ರಕಾರ ಮೆಂಟೇನ ಆಗುವದಿಲ್ಲ " ಅಂತಾ ಸೇರ್ಪಡೆ ಮಾಡುವದು ಹಾಗೂ ಹೊಸ ಪ್ಯಾರಾ ನಂ 12 ಎ ನೆಡ್ಡನ್ನು -

3) 12 ಎ. ಸದರಿ ಪ್ರತಿವಾದಿ ನಂ 5 ಇತನು ಈ ದಾವೆಯ ಪ್ರತಿವಾದಿ ನಂ 1 ರಿಂದ 4 ರವರಿಗೆ ದಾವಾ ಜಮೀನ ರಿ.ಸ.ನಂ.306/1 ಕ್ಷೇತ್ರ ಎಕರೆ 5-29 ಗುಂಟೆ ಆಕಾರ ರೂ 13-80 ಪೈಸೆ ನೆದ್ದನ್ನು ನೊಂದ ಖರೀದಿ ಮಾಡಿ ಕೊಡುವ ಹಕ್ಕು ವ ಅಧಿಕಾರ ಹೊಂದಿರುತ್ತಾರೆ ಅಂತಾ ನಂಬಿಕೆಯಿಂದ ಅಂದಿನ ಮಾರುಕಟ್ಟೆಯ ಬೇಲಿಗೆ ಸದರಿ ದಾವಾ ಜಮೀನವನ್ನು ನೊಂದ ಖರೀದಿ ಮಾಡಿರುವ ನಂಬಿಗಸ್ತ (ಬೋನಾಪೈಡ ಪರ್ಚೇಜರ್) ಖರೀದಿದಾರನು ಇರುತ್ತಾನೆ ಮತ್ತು ದಾವಾ ಜಮೀನ ನೊಂದ ಖರೀದಿ ಮಾಡಿದ ದಿನದಿಂದ ಇಂದಿನವರೆಗೆ ಸ್ವತಃ ಕಬ್ಬಿ ವಹಿವಾಟಿಯಲ್ಲಿರುತ್ತಾನೆ ಹಾಗಾಗಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲ ಯದವರಿಗೆ ಸದರಿ ವಾದಿಯಳು ಒಂದು ವೇಳೆ ದಾವಾ ಜಮೀನುಗಳಲ್ಲಿ ಪಾಲು ಪಡೆದುಕೊಳ್ಳುತ್ತಾಳೆ ಅಂತಾ ಕಂಡು ಬಂದರೆ ದಾವಾ ಜಮೀನ ರಿ.ಸ.ನಂ 306/1 ಕ್ಷೇತ್ರ ಎಕರೆ 5-29 ಗುಂಟೆ ಆಕಾರ ರೂ 13-80 ಪೈಸೆ ನೆದ್ದನ್ನು ಪ್ರತಿವಾದಿ ನಂ 1 ರಿಂದ 4 ರವರ ಹಿಸ್ಸೆಗೆ ಅಂತಾ ಪರಿಗಣಿಸಿ ಉಳಿದ ದಾವಾ ಜಮೀನ ರಿ.ಸ.ನಂ 306/2 ಕ್ಷೇತ್ರ ಎಕರೆ 4-00 ಗುಂಟೆ ಆಕಾರ ರೂ 9-64 ಪೈಸೆ ನೆದ್ದರಲ್ಲಿ ವಾದಿಯಳಿಗೆ ಅವಳ ಹಿಸ್ಸೆ ವ ಪಾಲನ್ನು ಕೊಡಿಸುವದಾಗಬೇಕು."

The application is supported with the affidavit of the defendant No.5.

2. It is stated in the affidavit accompanied to I. A No. V that, the plaintiff has filed the suit for the relief of partition and separate possession and declaration and permanent injunction. The defendant No.5 has appeared and filed his

written statement, but in Page No.2, Para No.4, line No.5 of the written statement, it is mentioned as signature has been made, it is to be rectified as signature has not been made and also sought for the proposed amendment as stated in the application. It is stated that if the defendant No.5 is permitted for amendment of the written statement, it will not change the nature of the suit and there is no any intentional delay in seeking the relief of amendment. If the application is allowed, no loss or hardship would cause to the plaintiff, otherwise the defendant No.5 will be put to irreparable loss and injustice. On these reasons the defendant No.5 prayed to allow the I.A.No.V.

3. The learned counsel for the plaintiff has filed an objections to I.A.No.V, he has contended that the reasons mentioned in I.A.No.V are false, application is liable to be rejected. It is denied that the property V.P.C. No.434/1 situated at Kavatkoppa village is belonging to the plaintiff, defendant No.1 to 4 and the said property is not included in the suit property. The averments made in the affidavit accompanied to I.A.No.V are false. It is asserted that the said property has been acquired for the purpose of Hipparagi Dam Project under L.A.Q.S.R.No.503/2010-11. Hence, the said property is not pertaining to the plaintiff and defendant

No.1 to 4. It is not acceptable that the plaintiff has not included the property R.S.No.306/1 and same is to be considered for partition. It is asserted that on the basis of written statement filed by the defendant No.5 and issues have been framed and the chief examination of the PW-1 has been recorded, when the case was posted for cross examination of PW-1, the present application is filed only to harass the plaintiff and drag the proceedings. On these assertions, the plaintiff prayed to dismiss the application with cost of Rs.5,000/-.

4. Heard the arguments by both side learned counsels. Perused the entire records.
5. The following points arise for consideration of the court.

POINTS

1. Whether the defendant No.5 has made out grounds that the proposed amendment in the written statement is necessary for proper adjudication of the case and to decide the right of the parties?
2. Whether the defendant No.5 has made-out grounds that he is entitled for the relief as sought in I.A.No.V?
3. What order ?

6. Findings to the above said points are as follows:

Point No. 1 : In the Affirmative,

Point No. 2 : In the Affirmative,

Point No. 3 : As per final order;

REASONS

7. **Points No.1 and 2:-** These points are inter linked with each other and requires common discussion in order to avoid the repetition of discussion. Therefore, these two points are discussed commonly.

8. The plaintiff has filed the suit against the defendant No.1 to 5 for the relief of partition and separate possession in respect of the suit property R.S.No.306/2 measuring 4.00 acres and R.S.No.306/1 measuring 5.29 acres, situated at Khavatkoppa village and declaration and permanent injunction. The plaintiff has contended that the suit property is ancestral and joint family property of plaintiff and defendant no.1 to 4. The plaintiff and defendant no.1 to 4 are the children of the defendant No.1 and deceased Haibatti. The defendant No.1 to 3 are placed exparty. The defendant no.4 has appeared and he has not filed his written statement. The defendant No.5 has appeared and he has

filed his written statement. The defendant No.5 has contended that, he has purchased the suit property by way of registered sale deed dated 11-05-2011, which has been executed by defendant No.1 to 4. He prayed to dismiss the suit.

9. The defendant No.5 has sought the proposed amendment as under;

ನಿಯೋಜಿತ ತಿದ್ದುಪಡಿ;

1) ಕೈಪಿಯತ ಪುಟ 2 ರಲ್ಲಿ ಪ್ಯಾರಾ ನಂ 4 ರಲ್ಲಿ 5 ನೇ ಸಾಲು ಕೊಣೆಗೆ ಸಹಿ ಮಾಡಿರುತ್ತಾಳೆ ಅಂತಾ ಇರುವಲ್ಲಿ "ಸಹಿ ಮಾಡಿರುವದಿಲ್ಲ" ಅಂತಾ ಹಾಗೂ

2) ಕೈಪಿಯತ ಪುಟ 3 ರಲ್ಲಿ ಪ್ಯಾರಾ ನಂ 7 ನೆಡ್ಡು ಮುಗಿದ ಮೇಲೆ ಮುಂದುವರೆದು " ಮತ್ತು ಸದರಿ ವಾದಿಯಳು ಸದರಿ ದಾವಾದಲ್ಲಿ ತನ್ನ ಹಾಗೂ ಪ್ರತಿವಾದಿ ನಂ 1 ರಿಂದ 4 ರವರ ಕುಟುಂಬಕ್ಕೆ ಇರುವ ಮನೆಯ ಆಸ್ತಿ ಅಥಣಿ ತಾಲುಕಾ ಪೈಕಿ ಸಂಕ್ರಟ್ಟಿ ಗ್ರಾಮ ಪಂಚಾಯತ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವ ಖವಟಕೊಪ್ಪ ಗ್ರಾಮದ ವ್ಹಿ.ಪಿ.ಸಿ ನಂ.434/1 ನೆಡ್ಡು ಈ ದಾವೆಯ ಪ್ರತಿವಾದಿ ನಂ 2 ಮತ್ತು 4 ರವರ ಹೆಸರಿನಿಂದ ದಾಖಲಿದ್ದು ಅದನ್ನು ದಾವಾ ಆಸ್ತಿ ಮಾಡಿರುವದಿಲ್ಲ ಹಾಗಾಗಿ ಸದರಿ ದಾವೆಯು ಕಾನೂನು ಪ್ರಕಾರ ಮೆಂಟೇನ ಆಗುವದಿಲ್ಲ " ಅಂತಾ ಸೇರ್ಪಡೆ ಮಾಡುವದು ಹಾಗೂ ಹೊಸ ಪ್ಯಾರಾ ನಂ 12 ಎ ನೆಡ್ಡನ್ನು -

3) 12 ಎ. ಸದರಿ ಪ್ರತಿವಾದಿ ನಂ 5 ಇತನು ಈ ದಾವೆಯ

ಪ್ರತಿವಾದಿ ನಂ 1 ರಿಂದ 4 ರವರಿಗೆ ದಾವಾ ಜಮೀನ ರಿ.ಸ.ನಂ.306/1 ಕ್ಷೇತ್ರ ಎಕರೆ 5-29 ಗುಂಟೆ ಆಕಾರ ರೂ 13-80 ಪೈಸೆ ನೆದ್ದನ್ನು ನೊಂದ ಖರೀದಿ ಮಾಡಿ ಕೊಡುವ ಹಕ್ಕು ವ ಅಧಿಕಾರ ಹೊಂದಿರುತ್ತಾರೆ ಅಂತಾ ನಂಬಿಕೆಯಿಂದ ಅಂದಿನ ಮಾರುಕಟ್ಟೆಯ ಬೇಲಿಗೆ ಸದರಿ ದಾವಾ ಜಮೀನವನ್ನು ನೊಂದ ಖರೀದಿ ಮಾಡಿರುವ ನಂಬಿಗಸ್ತ (ಬೋನಾವೈಡ ಪರ್ಚೇಜರ್) ಖರೀದಿದಾರನು ಇರುತ್ತಾನೆ ಮತ್ತು ದಾವಾ ಜಮೀನ ನೊಂದ ಖರೀದಿ ಮಾಡಿದ ದಿನದಿಂದ ಇಂದಿನವರೆಗೆ ಸ್ವತಃ ಕಬ್ಬಿ ವಹಿವಾಟಿಯಲ್ಲಿರುತ್ತಾನೆ ಹಾಗಾಗಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲ ಯದವರಿಗೆ ಸದರಿ ವಾದಿಯಳು ಒಂದು ವೇಳೆ ದಾವಾ ಜಮೀನುಗಳಲ್ಲಿ ಪಾಲು ಪಡೆದುಕೊಳ್ಳುತ್ತಾಳೆ ಅಂತಾ ಕಂಡು ಬಂದರೆ ದಾವಾ ಜಮೀನ ರಿ.ಸ.ನಂ 306/1 ಕ್ಷೇತ್ರ ಎಕರೆ 5-29 ಗುಂಟೆ ಆಕಾರ ರೂ 13-80 ಪೈಸೆ ನೆದ್ದನ್ನು ಪ್ರತಿವಾದಿ ನಂ 1 ರಿಂದ 4 ರವರ ಹಿಸ್ಸೆಗೆ ಅಂತಾ ಪರಿಗಣಿಸಿ ಉಳಿದ ದಾವಾ ಜಮೀನ ರಿ.ಸ.ನಂ 306/2 ಕ್ಷೇತ್ರ ಎಕರೆ 4-00 ಗುಂಟೆ ಆಕಾರ ರೂ 9-64 ಪೈಸೆ ನೆದ್ದರಲ್ಲಿ ವಾದಿಯಳಿಗೆ ಅವಳ ಹಿಸ್ಸೆ ವ ಪಾಲನ್ನು ಕೊಡಿಸುವದಾಗಬೇಕು."

10. It is relevant to note that the learned counsel for the defendant No.5 has argued that due to typical error, it is mentioned in the written statement that signature has been made, instead of signature has not been made and other paragraphs required to be inserted to prove the defense of the defendant No.5. Records reveal that, issues have been

framed on 23-01-2021. The plaintiff has filed her chief examination on 04-01-2022 and the defendant No.5 has partly cross examined the PW-1 on 21-06-2022. When the case was posted for further cross-examination of the PW-1, the present applications is filed for amendment of written statement. The defendant No.5 has specifically stated that if the proposed amendment is allowed, it will not change the nature of the suit and the contention of the defendant No.5.

11. On perusal of the proposed amendment it appears to the court that the defense of the defendant has to be proved and it will not change the nature of the contentions of the defendant No.5, which is already taken in his written statement.
12. This court has relied the decision, in the case of **Xavier Ferrao and another V/s Theresa Ferrao**, passed by the *Hon'ble High Court of Karnataka, reported in 2007(4) KCCR 2249*, wherein, it is observed at para No. 13 and 14 as under,

“13. In another decision, in the case of Rajesh Kumar Aggarwal and Others. V/s. K.K.Modi and Others, AIR 2006 Supreme Court 1647, the Apex

Court has observed in paragraph 16 of the judgment thus:

“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 other side.”

It is also further observed in paragraph-18 thus:

“In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit”

14. It is the observation of the Apex Court further in this case that it is settled by a catena of decisions of the Apex Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The above propositions of law laid down by the Apex Court in my view are applicable to the case on hand and the learned Judge of the lower Appellate Court therefore, could not have refused to permit the appellants to bring in the amendment as sought by them.”

13. This court has relied the another decision, in the case of ***B.N.Kamalanabha Reddy V/s Munivenkatappa and others***, passed by the Hon’ble High Court of Karnataka, reported in ***2016(1) KCCR 458***, wherein, it is observed and held at para No. 8 that,

“8.A reading of the said decision would clearly indicate that any amendment which is sought will have to be liberally construed. A time barred claim could also be permitted if basis of the claim

is already in the pleadings. So also is the decision of the Apex Court in the case of A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation. The aforesaid decisions on the question of amendment of pleadings under Order 6 Rule 17 would clearly indicate that the Courts should have a liberal approach in allowing the application for amendment. But however the said liberal approach is being curtailed to some extent but not taken away by the amendment to the Code of Civil Procedure which is brought about by the Amendment Act, 2002 wherein a proviso has been added to the original provision of Order 6 Rule 17 wherein it is stated that unless compelling reasons are shown as to why the proposed amendment could not be made before the commencement of the trial generally the application for amendment will have to be considered within the ambit of provision. The Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India has stated that the amendment to the pleadings after the amendment of the Code will have to be viewed keeping in mind the proviso to Order 6

Rule 17. But however there is no blanket ban refusing the amendment after the trial has commenced.”

14. This court has gone through the above decisions. In the above decisions, it is held that, ***rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.*** Upon considering both parties contentions and materials placed by the both parties, if opportunity is given to the defendant No.5 to amend the written statement, it will not cause injustice to the plaintiff. Moreover, to avoid the multiplicity of proceedings, the amendment sought by the defendant No.5 is necessary for proper adjudication and to decide the rights of the parties in respect of immovable property in the interest of justice. At the same time the delay in seeking the present amendment can be compensated by imposing cost. Hence, under the facts and circumstance of the case, this court is of the considered opinion that, the defendant No.5 has made out the grounds and he is entitled for the relief as sought in I.A.No.5. Hence, this court answers Point No.1 and 2 in ***Affirmative.***

15. **POINT No.3:-** In view of my findings on above points and having regard to the facts and circumstances of the case, this court proceeds to pass the following;-

O R D E R

I.A. No.V U/o 6 Rule 17 R/w U/sec 151 of C.P.C filed by the defendant No.5 is hereby allowed, subject to payment of cost of Rs.200/- to the plaintiff.

The defendant No.5 is permitted to amend the written statement as sought in I.A.No.V and furnish amended written statement.

(Dictated to Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court this the **11th day of September, 2023**).

[Jagadeesh Biserotti]
Prl. Civil Judge and J.M.F.C.,
Athani.

(Orders pronounced in the open court, vide separate orders)

ORDER

I.A. No.V U/o 6 Rule 17 R/w U/sec 151 of C.P.C filed by the defendant No.5 is hereby allowed, subject to payment of cost of Rs.200/- to the plaintiff.

The defendant No.5 is permitted to amend the written statement as sought in I.A.No.V and furnish amended written statement.

[Jagadeesh Biserotti]
Prl. Civil Judge and J.M.F.C.,
Athani.

ORDER

I. A. No. VI filed U/o 7 Rule 11 R/w U/Section 151 of C.P.C by the defendant No.5 is hereby rejected.

No order as to costs.

[Jagadeesh Biserotti]
Prl. Civil Judge and J.M.F.C.,
Athani.