



IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak
C/C II Addl. Senior Civil Judge, Gokak

Dated, this the 16th day of July, 2022

O.S.No.359/2016

Plaintiff: Kempanna Gurushiddappa Hulloli,
Age: 58 years, Occ: Agriculture,
R/o: Kolavi village, Gokak taluk.

(By Sri. BSK., Advocate)

V/s

Defendants: 1. Ramaling S/o. Rudrappa Kapashi,
Age: 66 years, Occ: Agriculture,
R/o:Chogadolli Cross, Farm House,
Melavanki village, Gokak taluk.

2. Mahadev S/o. Ramaling Kapashi,
Age: 33 years, Occ: Agriculture,
R/o:Chogadolli Cross, Farm House,
Melavanki village, Gokak taluk.

3. Veerabhadra S/o. Ramaling Kapashi,
Age: 29 years, Occ: Agriculture,
R/o:Chogadolli Cross, Farm House,
Melavanki village, Gokak taluk.

4. Vitthal S/o. Ramaling Kapashi,
Age: 26 years, Occ: Agriculture,
R/o:Chogadolli Cross, Farm House,
Melavanki village, Gokak taluk.

(By Sri. MRB., Advocate)

I.A. No.3



Applicant : Kempanna
V/s
Opponents : Ramaling and others

ORDERS ON IA No.3 FILED UNDER ORDER 6 RULE 17 READ WITH
SECTION 151 OF CPC

Plaintiff has made the instant application seeking permission to amend the plaint by incorporating the proposed amendment as mentioned in the application on the grounds that he has filed the suit and it was disposed off by passing an exparte decree. Against the same defendants filed a miscellaneous petition and it was allowed and exparte decree was set aside. Now, defendants filed their written statement by making false allegations with a new story. In order to given explanation to the contention of the defendants, the plaintiff filed this application. The proposed amendment will not change the nature of the suit or it is not a new facts of the pleadings. The defence of the defendants will not be affected. Moreover, the proposed amendment is necessary to determine the real question in controversy between the parties on merits. If the application is allowed, no loss or hardship would be caused to the defendants. On the contrary, if the application is not



allowed, the plaintiff will be put to more loss and hardship, which cannot be compensated in terms of money.

2. This application is resisted by the defendants contending that the averments made therein are false and have contended that why the present plaintiff suppressed the said fact and by suppressing it he obtained an ex parte decree and thereafter it was ordered to be set aside. The contents of the written statement is not permitted to be explained in the plaint, which is not permissible and which is beyond the purview of Order 6 Rule 17 of CPC. Absolutely, the amount of Rs.7,28,000/- was not paid on 09.09.2015, which is evidenced from the facts of the written statement. The law does not permit the plaintiff to change his version in the pleadings by virtue of the contents in the written statement. The said fact which is not sought to be amended is well within the knowledge of the plaintiff and why the said facts were not narrated in the earlier plaint is not explained by the plaintiffs. The explanation now given is not necessary to determine the issue or the amendment is not necessary as already the said fact is disclosed by the defendants in the written statement. Hence, amendment is totally



unnecessary. Accordingly, it is prayed for dismissal of the application with cost.

3. I have heard the arguments of the learned counsel appearing for the parties and perused the material on record.

4. Points that arise for consideration of the court are;

1. Whether the plaintiff has made out grounds to allow the present application?

2. What Order?

5. Findings of the court on the above points are as under:

Point No.1: in the affirmative and

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

R E A S O N S

6. Point No.1; the material on record goes to show that the plaintiff intends to insert new facts relating to earlier sale agreements held in between the plaintiff and defendants 1 and 3 and their cancellation and passing of sale consideration of Rs.7,28,000/-. That apart, the plaintiff intends to insert the fact regarding institution of suits i.e., OS.No.497/2017 and



OS.No.16/2019 by the defendants for partition of the properties including the suit property. Apart from these new facts, the plaintiff intends to make rejoinder in respect of the defence taken up by the defendants in relation to the execution of the alleged agreement of sale.

7. The proposed amendment sought in respect of insertion of the fact of filing of the said suits and the fact relating to the alleged fraud and misrepresentation contended in the written statement need to be allowed because the said suits have been filed subsequent to the present suit and the plaintiff has two options to defend the defence taken up by the defendants i.e., by filing a rejoinder or amending his plaint. In the case at hand, he has chosen the option of amendment.

8. However, now the point that arises for consideration of the court is that whether or not the facts relating to execution of the alleged earlier agreements by the defendants 1 and 3, their cancellation and passing of the alleged sale consideration of Rs.7,28,000/- could be allowed. No doubt, as rightly contended by the defendants the said facts could have been pleaded in the plaint at the time of filing of the same. However, the initial burden



of proof of the said facts is upon the plaintiff. Therefore, the said facts could be allowed to be amended. Even, if the proposed amendment is allowed, it neither changes the nature of the suit nor brings a new cause of action nor causes hardship to the defendants. In the circumstances, the application needs to be allowed by imposing cost. Accordingly, the point No.1 is answered in the affirmative.

9. Point No.2; in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA No.3 filed Under Order 6 Rule 17 R/W/S 151 of CPC, is hereby allowed on cost of Rs.200/-

The plaintiff is permitted to amend his plaint as sought in the present IA.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 16th day of July, 2022)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak
C/C II Addl. Senior Civil Judge, Gokak