

06.06.2026
Pltf.: By SL Adv.;
Def.: By BMA, KSN and NMJ
Order on IA No.IV

ORDER ON IA No.IV

The plaintiffs have filed the present application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC.', for brevity) seeking to permit them to carry out the amendment in the plaint as under:

Proposed Amendment

1. In page No.3 after para No.3, add the following in same para 3a of the plaint.

3a. It is submitted that, the suit schedule property bearing Sy.No.49/5 measuring to an extent of 0.27 guntas and in Sy.No.48/1 measuring to an extent of 1 acre 0.2 guntas totally to an extent of 1 acre 0.29 guntas of the suit schedule property situated at Sompura village, kasaba Hobli, Hoskote Taluk, Bangalore rural having common boundaries and originally owned by the one Siddappa S/o Muniyappa and both the properties are the adjacent properties and at the children of the said Siddanallappa by name Lakshmaiah and Muniyappa were inherited the same after the death of the said original kathadhar and there were enjoyed the said both properties as single bite of property and it is relevant to state that due to their family necessities the said Lakshmaiah and Muniyappa were sold entire property of Sy.No.49/5 and Sy.No.48/1 into

three bites, through an deferent sale deeds dated 17.10.1958, 02.01.1959 and 27.02.1961 for a valuable sale consideration.

And in para No.5 in 4th line delete the No.49/5 and insert in place of it as Sy.No.48/1

And in para No.6 in 4th line delete the No.49/5 and insert in place of it as Sy.No.48/1

And in same Para after the word Muniyappa insert is as follows" through registered sale deed dated 27.02.1961, vide registered document No.3714/1960-61 Volume No.985 page No.185-186, registered at office of Sub-Registrar, Hoskote since from the above referred three sale deeds the plaintiffs are in continues possession and enjoyment of the suit schedule properties which are mentioned boundaries therein.

And in Para No.8 in last line after the properties insert as" the boundaries prevail over the property number and extent at that time of the registered the sale deed dated 02.01.1959 and 27.02.1961 the vendors/owners are mentioned the Sy.No.49/5 instead of Sy.No.48/1 but the boundaries shown in the said sale deed are belongs to the Sy.No.48/1 and boundaries and the other description of the schedule property was correctly mentioned and the boundaries mentioned in the said sale deed is in conformity and tallies with the possession and enjoyment of the plaintiffs over the suit schedule property since from the purchase of the schedule property the plaintiffs along with their family

members are in continues peaceful possession and enjoyment of the same and as for the property No, mentioned in the afore said sale deed the katha was not effected in the Sy.No.48/1 but the possession is delivered to the plaintiffs as per the boundaries mentioned and it is relevant to state that, since from purchased the properties under registered sale deed dated 02.01.1959 and 27.02.1961 the father in law of the 1st plaintiff were in peaceful enjoyment of the suit schedule property till than his death and after the death of said Muniyappa his son by name Munishamappa that this husband of the 1st plaintiff and father of the other plaintiffs was/is in possession and enjoyment of the suit schedule property along with plaintiffs without any body hindrance and interference of the suit schedule property by growing commercial corps and the plaintiff made entire property to the drip and sprinkler water pipe line to the suit schedule property also. Thus, the plaintiffs became the absolute owners in possession and enjoyment of the schedule property uninterruptedly and continuously without anybodies hindrance. The certified copies of the above referred sale deeds are produced and photos and C.D here with furnished for kind perusal of this Hon'ble court and marked the same.

In prayer Colum before (a) prayer insert prayer as follows;

- a-1. Declare that the plaintiffs are the absolute owners in possession and enjoyment of the suit schedule property.

- a-2 Directing the defendants' No. 1 to 5 execute the rectification deed as per sale deed date 02.01.1959 and 27.02.1961 in favour of plaintiffs herein. Or In the event of failure on the part of the defendants 1 to 5 to execute the rectification deed, direct the Sub-registrar, Hoskote to register the rectification deed as per the Judgment and Decree.
- c-3. To declare that, the katha of the schedule property in respect of the Sy.No.48/1 standing in the name of the defendants are null and void.

2. It is averred in the affidavit annexed to the application that, at the time of filing the suit they have given entire instructions to the earlier counsel regarding the the proposed amendment, but inadvertence the earlier counsel not inserted the said facts in the plaint and it is recently came to their knowledge through the present counsel. Thereafter, immediately they filed the present application after obtaining certain revenue documents. The proposed amendment is just and necessary to decide the suit on merits. The proposed amendment will not change the nature of the suit or make out a new case. With these, prayed to allow the application.

3. Per contra, the defendant No.3 to 5 resisted the application by filing objection. It is specifically contended that the application filed by the plaintiffs are wholly misconceived, frivolous and an attempt to protract the proceedings. The application for amendment

lacks bona-fides in a much as it has been made with a view to protract the proceedings. The application is hit by delay and leaches. The amendment sought by the plaintiffs changes the nature of the suit and cause of action so as to set up an entirely new case such as amendment must be disallowed and the plaintiffs have not made out any justifiable grounds for allow the said application. Therefore, the defendants prayed to dismissal of the application.

4. The points that would arise for consideration are:-

1. Whether the plaintiffs have made out that the amendment sought for is required to elucidate the matter in dispute?

2. What order?

5. I have heard the Learned Counsel for the parties and meticulously perused the materials on record.

6. My answer to the above said points are as under:

Point No.1: In the Affirmative;

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

REASONS

7. **Point No.1:-** The plaintiffs have filed the present suit against the defendants for grant of permanent injunction. The

Learned Counsel for the plaintiffs argued that now the plaintiffs intend to claim the declaration of title over the plaint schedule property. The proposed amendment is required to elucidate the matter in dispute. The proposed amendment will not change the nature of the suit or introduce new cause of action. As such, he has prayed to allow the application. Counter to that, the Learned Counsel for the defendants argued that the proposed amendment is an afterthought and there was no due diligence. The present application filed at highly belated stage and barred by law of limitation. As such, he has prayed to dismissal of the application.

8. When the matter was posted for plaintiffs evidence, at this stage the plaintiffs have filed the present application seeking to permit them to carry out the proposed amendment in the plaint. Order VI Rule 17 of CPC enables that the Court at any stage of the proceeding to allow either party to alter or amend the pleadings. It also provides that all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Further, it is bounden duty of the defendants/plaintiffs to show to the Court that in spite of due diligence they could not able to amend the plaint/written statement. At this juncture it is worth refer judgment of the Hon'ble Apex Court in the case of Revjeetu Builders and Developers -Vs-

Narayanaswamy and Sons and Others reported in (2009) 10 SCC 84, wherein their lordships have held at para No.63 that, while allowing or rejecting the application for amendment the following basic principles ought to be taken into consideration:

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?**
- (2) Whether the application for amendment is bona fide or mala fide?**
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;**
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;**
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and**
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.**

9. I have carefully and cautiously gone through the proposed amendment. The plaintiffs want to seek comprehensive relief of declaration of title in respect of the suit schedule property by seeking an amendment of the plaint by proposed amendment. In the case on hand, the trial not yet commenced. It is worth to refer decision of the Hon'ble Apex Court in the case of Ramchandra Sakharam Mahajan -Vs- Damodar Trimbak Tanksale (Dead) and Others reported in (2007) 6 SCC 737, wherein the Hon'ble Apex Court held at para 14 that **the plaintiff, though somewhat belatedly, attempted to amend the plaint to make his claim more precise so as to enable the Court to adjudicate upon it more satisfactorily.** In view of above ratio, the proposed amendment will not change the nature of the suit nor introduce a new cause of action. It is settled law that an amendment of plaint can be permitted for conversion of suit from injunction to declaration and other consequential reliefs, with a view to avoid multiplicity of litigation. Therefore, granting permission or leave to amend the plaint for conversion of suit from perpetual injunction to injunction does not amount to change of nature of suit. Even the plaintiffs are permitted to amend the plaint, the heavy burden upon the plaintiffs to prove the same. The defendants have opportunity to file additional written statement to the amendment. The delay in

filing the application for amendment by the plaintiffs can be condoned by imposing a suitable costs and the same will meet ends of justice. Accordingly, I answer point No. 1 in the '**Affirmative**'.

10. **Point No.2:-** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

IA No.IV filed by the plaintiffs under Order VI Rule 17 read with Section 151 of C.P.C., is allowed on cost of Rs.500/-.

Consequently, the plaintiffs are permitted to amend the plaint as prayed in the application.

For amendment of plaint and amended plaint by:

**Prl. Civil Judge & JMFC.,
Hosakote.**