



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,**  
**MUDIGERE**

**PRESENT : Sri.Sachin.D.** B.A.,LL.B.,  
Prl.Civil Judge & JMFC.,  
Mudigere.

**DATED THIS THE 07<sup>th</sup> DAY OF AUGUST 2023**

**ORIGINAL SUIT.No:19/2019**

**BETWEEN :**

Felix Serrao S/o Aplu Serrao,  
Aged about 71 years,  
R/o Kottigerehara, Banakal Hobli,  
Mudigere Taluk.

Represented here-in-by SPA holder  
Mithesh Ronald Serrao,  
S/o Felix Serrao,  
Aged about 29 years,  
R/o Kottigehara, Bankal Hobli,  
Mudigere Taluk

*... Plaintiff*

***(By Sri. K.M.Prashanth, Adv.)***

**AND :**

1. K.I.Abdul Ajeed,  
Aged about 45 years,
2. Maimuna @ Mahima,  
Aged about 42 years,
3. Rukiya,



Aged about 40 years.

4. K.I.Iliyas @ Badru,  
Aged about 38 years,

Defendants No.1 to 4 are the sons and  
No.2 and 3 are the daughters of  
late Mohammed Ibrahim,  
Hotel Bharath, Kottigehara,  
Banakal Hobli, Mudigere Taluk. *...Defendants*

**(By Sri K.S.Adithya, Adv.,)**

**PARTIES TO IA. No.4**

**BETWEEN :**

K.I.Abdul Ajeed & Ors. *...Applicants*

**AND :**

Felix Serrao *...Opponent*

**ORDER ON IA NO:4**

The defendants have filed present application under Order 6 Rule 17 R/w section 151 of CPC, when the case was stood for cross-examination of PW1, seeking an order of this court to permit them to amend the written statement of the defendant No.1 as made mentioned in the application.



**2.** In the affidavit annexed to the application the defendant No.1 has deposed that while describing the property of his predecessor title in the written statement at page No.2 and para No.5 at line No.7, the northern boundary shown as southern boundary and southern boundary was shown as northern boundary, due to typographical mistake. The southern boundary of their land is K.M Road and northern boundary is the property of Peter Arena. The said mistake has to be corrected, otherwise, they will be put to irreparable loss and injury. Hence, prayed for allow the application and permit them to amend the written statement as made mentioned in the application.

**3.** The above application has been resisted by the plaintiff by filing objection statement. Wherein, it is contended that the defendants wrongly shown the opponent name as Delix Serrao in the title of the IA and therefore, it is not maintainable. It is further contended that on 25.06.2019, the issues have been framed by this court and started to record the evidence of the plaintiff on 09.07.2019. Thereafter, the plaintiff has commenced evidence and hence, once trial has been commenced and made a considerable head way, there is no scope of amendment of written statement. It is further contended that there is no whisper in the affidavit as to due diligence of the defendants as to why



they could not seek the amendment prior to commencement of trial and the reason put forth by the defendant No.1 in his affidavit that the typographical mistake. The said reason is not satisfy the requirements of the proviso under Order 6 Rule 17 of CPC. Therefore, the present application is not survive for consideration. It is further contended that by changing the northern and southern boundary detailed in para No.5 of the written statement, the defendants are trying to change the location and existence of the property. Nowhere, in the written statement, the defendants have not speak that there is a property of the predecessor title of the defendant No.1. Therefore, the defendants trying to infuse a newly innovated theory by way of amendment. The defendants have already admitted the existence of K.M Road towards northern side and land of Peter Arena to the south of the property detailed at para No.5 of the written statement. Therefore, at this juncture, the said admission can't be withdrawn under the guise of amendment.

**4.** It is further contended that the present application is filed to fill up the lacuna and overcome loop-holes which is not permissible under law. Hence, if the application is allowed, the plaintiff will be put to irreparable loss. It is further contended that absolutely, there is no reasons put-forth as requirement of the law for seeking amendment and



the present application is filed to protract the proceedings and to deffer the justice. Therefore, the application filed by the defendant is vexatious, fictitious, fraudulent and devoid from merits. Hence, prayed for dismiss the application with costs.

5. In view of the above rival contentions of the both parties, the following points arise for consideration.

**1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?**

**2. What order?**

6. Heard arguments of the defendants counsel. Counsel for the plaintiff has filed his written argument. The court perused the application, affidavit, objection statement, authorities supplied by the plaintiff counsel and other materials made available on record. Now, the findings of the court to the above points are as follows.

Point No.1 : ***In the Affirmative.***

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



## **REASONS**

**7. POINT No.1:** The present suit filed by the plaintiff for the relief of declaration, recovery of possession, mesne profits and consequential relief of perpetual injunction against the defendants with respect to property bearing Sy.No.214 of Athigere Village, Banakal Hobli, Mudigere Taluk. When the case was said-down for cross-examination of PW1, the present application is moved by the defendants seeking permission of the court to amend the written statement of the defendant No.1 as made mentioned in the application. The proposed amendment which mentioned in the application read as follows:-

**Proposed amendment;**

*In para No.5 of the written statement at page No.2 at line No.7 in the lace of word "North" the word "South" be written and in the place "south" word "north" be written.*

**8.** Order 6 Rule 17 of CPC confers the jurisdiction to the court to allow either party to the suit to alter or amend their respective pleadings at any stage of the proceedings and on such terms as may be just. Such amendments should be for determination of real questions in controversy between the parties. Pre-trial amendments are to be considered more liberally, than those which are sought after the commencement of trial. Therefore, whether the proposed



amendment is just and proper for determining the real questions in controversy between the parties is the cardinal test and it is the primary duty of the court to decide that whether the amendment sought is necessary to decide the real questions in dispute between the parties or not.

**9.** Admittedly, the order sheet reveals that on 25.06.2019, the issues have been framed. Thereafter, the SPA holder of the plaintiff was examined as PW1. Further, on 04.08.2022, the additional issue has been framed and the same was treated as preliminary issue as it related to pecuniary jurisdiction of the court. Thereafter, the enquiry has been conducted and order was passed on preliminary issue on 18.03.2023 and held that this court is having pecuniary jurisdiction. Thereafter, the case was posted for cross-examination of PW1 and during that time, the defendants have moved the present application. Hence, it is clear that already the trial has been commenced. But in the affidavit annexed to the application, the defendant No.1 has not stated reasons as to why he could not bring the proposed amendment before commencement of trial. However, he has stated that due to the typographical mistake error was crept in the written statement.



**10.** On perusal of the proposed amendment, it is clear to the court that the defendants wants to change the boundary of the property which described in the written statement of defendant No.1. Their contention is that due to typographical mistake, the southern boundary shown as northern boundary and the northern boundary shown as southern boundary. The plaintiff has contended that regarding boundary of the property described in the written statement, the defendants have admitted and the same can't be withdrawn by way of this proposed amendment. In support of said contention, it is relied upon the decision reported in **2017(2) KCCR 1245** between **Sri.Mahadevappa V/s Sri.Shankareppa & Ors.** Wherein, the Hon'ble High Court of Karnataka by referring many decisions has discussed the principles of order 6 Rule 17 of CPC. On careful reading of the plaint and written statement, it is to be noted that the proposed amendment which sought to be amended are not the admission. The defendant No.1 has described the property in the written statement. Just because he pleaded and described his case, that can't be taken as admission. Because, the defendant has not admitted the facts which plaintiff already pleaded in his plaint. So, the said contention of the plaintiff that admission can't be withdrawn by way of amendment is not sustainable as the defendants are not going to withdraw any admission.



**11.** As rightly contended by the plaintiff in the objection statement, the defendants have not stated any single reason as to why they could not bring the amendment before commencement of trial. The said ground alone, the application of the defendants can't be rejected. Because, herein this case though PW1 was examined in the year 2019 itself, till now the cross-examination of PW1 was not conducted. The defendants wants to inter change the boundaries of the property which described in the written statement of defendant No.1. Thus the amendment is nothing, but which already on record. Hence, though the defendants have failed to establish the due diligence as to why they could not raise proposed amendment before commencement of trial, the proposed amendment is necessary for adjudication of the issue involved in this suit.

**12.** It is contended by the plaintiff that the application of the defendants filed after the commencement of trial and therefore, it is belated one. In support of said contention, relied upon the decision reported in **(2013) 9 SCC 485** between **Mashyak Grihnirman Sahakari Sanstha Maryadit V/s Usman Habib Dhuka & Ors.** Wherein, the Hon'ble Apex Court has observed at para No.8 that *"the High Court has not considered these undisputed facts and passed the impugned*



*order on the general principles of amendment as contained in Order 6 Rule 17 of the Code of Civil Procedure. Hence, we do not find any ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an afterthought for the obvious purpose to avert the inevitable consequence.”* Herein this case, as already observed above, though the present application for amendment filed after the commencement of trial, still PW1 was not cross-examined by the defendants. Further, it is to be noted that the application filed to correct the typographical error and therefore, it is bonafide one. If the application is allowed, amendment should not cause any prejudice to the plaintiff. Moreover, the inconvenience caused to the plaintiff due to the present application of the defendants can be compensate in terms of the money. Further, it is to be noted that the proposed amendment will not change the fundamental defence of the defendants. Hence, under the circumstances of the case, it is of the opinion of this court that the amendment is necessary for the purpose of determine the real dispute between the parties. Therefore, this court answer point No.1 **in the Affirmative.**



**13. Point No:2:** In view of the above discussions on point No:1 this court proceed to pass following:

**: O R D E R :**

***The IA No.4 filed by the defendants under 6 Rule 17 R/w section 151 of CPC is hereby allowed on cost of Rs.500/-.***

***Consequently, the defendants are hereby permitted to amend the written statement of defendant No.1 as made mentioned in the application within 14 days from the date of this order.***

*(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the 07<sup>th</sup> day of AUGUST, 2023)*

(Sri. Sachin. D)  
Prl. Civil Judge & JMFC.,  
Mudigere.

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