



IN THE COURT OF CIVIL JUDGE AND J.M.F.C, SRINGERI

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & J.M.F.C, Sringeri**

DATED THIS THE 22nd DAY OF APRIL 2024

F.D.P No. 03/2019

BETWEEN:

Sri. Manjunatha **PETITIONER**
-AND-
Sri. Narasimha & Others **RESPONDENTS**

IN I.A.NO.VI

Sri. Manjunatha **APPLICANT/ PETITIONER**
-AND-
Sri. Narasimha & Others **OPPONENTS/
RESPONDENTS**

PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order VI Rule 17 R/w S.151 CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Amendment of Petition</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>09.08.2023</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.VI</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>04.10.2023</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>22.04.2024</i>



ORDERS ON I.A. NO. VI

- 1.** Applicant/ Petitioner has filed the instant application under Order VI Rule 17 r/w Section 151 of C.P.C seeking amendment of the Petition to the effect made in the application.
- 2.** In the affidavit appended to the application, the contention of the Applicant/ Petitioner is that on filing of this petition, at his instance, 'C' schedule property which was not part of the preliminary decree was allowed to be added and on order by this Court, Commissioner was appointed to inspect, measure and report about the extent of 'C' schedule property against which, the Petitioner has filed his objections; the 'A' and 'B' schedule properties are his joint family properties and the preliminary decree is passed granting him 1/7th share in the same and w.r.t to those properties, a commission was issued earlier and of 10 guntas of land in 'B' schedule which is in his possession, there is no any kind of approach and he is required to access it using properties which are in possession of Opponents/ Respondents against which they are causing problems to him; unless all the properties are equally divided and delivered to the share of the parties, huge loss would be caused to him. With these contentions, the prayer is to allow the application.
- 3.** Resisting the application, the Opponents/ Respondents have filed the objections contending that the application is not maintainable; the 'C' schedule property was added at the instance of Petitioner himself and when the commissioner report returned adverse to him, to deviate the Court from that fact, the Petitioner is filing applications one after the other and there is no necessity to seek amendment at all; though the 'C'



schedule property was added at the instance of the Petitioner, Respondents in thier objections have contended that justice would be served if 'C' schdule property is divided and delivered to all the shares and hence, the amendment is of no necessity. With these contentions, the prayer is to reject the application.

4. Heard both sides.
5. Having heard the rival contentions and on perusal of the materials, the points that would now arise for my consideration are as under -

Point No.1 : Whether the Applicant/ Petitioner has made out reasonable grounds to allow the application in I.A No.VI?

Point No.2 : What Order?

6. Now, my findings to above points is as follows -

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1:-** The main petition is filed seeking relief of drawing Final Decree for Partition on basis of Preliminary Decree passed by this Court in O.S No.24/2013. The instant application is filed seeking amendment of the petition to the effect that the following line found in the prayer portion of the petition is to be deleted -

'ಹಾಗೂ ಕೋರ್ಟ್ ನಿಯೋಜಕರು ಸಲ್ಲಿಸಿದ ನಕ್ಷೆಯಂತೆ'

8. Before advertng to the factual matrix any further, it would be beneficial to first have a conceptual understanding of the law



relating to amendment of pleadings. Order VI Rule 17 of C.P.C governs aspect relating to amendment of pleadings and the following judgement of the Hon'ble Supreme Court of India beautifully encapsulates the scope and ambit of the law relating to amendment of pleadings. In **LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER** reported in **2022 SCC OnLine SC 1128**, the Hon'ble Supreme Court of India has held at Para No.70 as under -

Our final conclusions may be summed up thus:

- (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*
- (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*
- (iii) The prayer for amendment is to be allowed*
 - (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
 - (ii) to avoid multiplicity of proceedings, provided*
 - (a) the amendment does not result in injustice to the other side,*
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*



- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) the amendment changes the nature of the suit,*
- (iii) the prayer for amendment is malafide, or*
- (iv) by the amendment, the other side loses a valid defence.*

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result



of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)

- 9.** Keeping in mind the guidelines issued by the Hon'ble Supreme Court of India in LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER (Supra) and the very provision of law, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.
- 10.** To elaborate on the proposed amendment now sought to the made to the existing petition, it is seen that the Petitioner is only intending to delete the line afore-extracted which in his opinion is very much necessary for better adjudication of the Petition.
- 11.** True that, the commission work in respect of all the three properties i.e 'A', 'B' and subsequently of 'C' schedule properties have already been conducted and the Petitioner has expressed his grievances against the report filed in respect of 'C' schedule property and there was no objection earlier with respect to the reports filed in respect of 'A' & 'B' schedule properties. But now, with this amendment, it is his contention that if the division is effected in the manner as laid down in the commissioner reports, great hardship would be caused to him. The amendment would only have an effect of him resisting even the commission reports filed in respect of 'A' & 'B' schedule properties in addition to his objection in respect of report filed in respect of 'C' schedule property. That



alone cannot dis-entitle the Petitioner from seeking the amendment and that in no way would cause prejudice to the Respondents especially since, no finding is still given by the Court on the commission reports which have been filed.

- 12.** Amendment of pleadings should generally be permitted where it would result in solution of real controversy between parties, without altering the cause of action. It is settled law that amendment cannot be claimed as a matter of right under all circumstances, but Court ought not to adopt hyper technical approach while deciding such prayers. In other words, Court should be liberal. Applying these principles, it is found that the proposed amendment is necessary under the facts and circumstances and accordingly, the Point No.1 which has arisen for my consideration is answered in the ***Affirmative***.
- 13. Point No.2:-** For the foregoing reasons, the following -

ORDER

I.A No.VI filed by the Applicant/ Petitioner under Order VI Rule 17 r/w Section 151 of C.P.C is hereby allowed .

Resultantly, Applicant/ Petitioner is permitted to carry out the amendment and furnish amendment Petition within the next hearing date.

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 22nd DAY OF APRIL, 2024)

Sd/-

**(Rahul Shettigar)
Civil Judge & J.M.F.C,
Sringeri.**