

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
PRINCIPAL J.M.F.C., TARIKERE**

**PRESENT :**

**SRI VAIDYA SHREEKANT,**

*B.Sc, LL.B.*

*Senior Civil Judge & Prl. J.M.F.C.,  
Tarikere.*

(Name of the Presiding Judge)

**DATED : THE 02<sup>nd</sup> DAY OF JANUARY 2024**

**OS No.50/2016**

**ORDER ON IA-IV FILED UNDER ORDER VI RULE 17 OF CPC**

The present application has been filed by the plaintiff seeking amendment of the plaint. By way of amendment, the LRs of the plaintiff want to get insert two more properties in the plaint.

2. In the annexed affidavit to the application, the plaintiff No.1(c) deposed that the properties referred in the application fell to the share of his father and in subsequent partition the said properties fell to his share. The said properties are included in the Will deed alleged to be executed by his father in favour of 1<sup>st</sup> defendant. The said fact came to his knowledge very recently after production of the same in the evidence. Hence, he constrained to file this application.

3. The application is objected by the defendant No.1. It is contention of the defendant No.1, the evidence of the parties is already concluded and the matter is posted for arguments. Hence, application is not maintainable. No cogent reasons are made out in the application to allow the proposed amendment. The suit was filed in the year 2016 and this application is filed after lapse of 6 years etc.

4. Heard on application.

5. The following points arise for consideration of this Court :

1. *Whether the LRs of the plaintiff have made out reasonable grounds to allow the proposed amendment?*
2. *What order ?*

6. After hearing both sides and after appreciation this court answers the above points as under;

Point No.1: In the Affirmative

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

## **R E A S O N S**

7. **POINT No.1:** As discussed above, by way of amendment the LRs of the plaintiff want to get insert two more properties in the plaint by alleging that the said properties fell to his share in the partition. These

properties are also subject matter of the will deed alleged to be executed by his father in favour of the defendant No.1. Per contra, the defendant No.1 contended that the application is filed at the belated stage, it cannot be allowed.

8. Admittedly, the present application has been filed at the stage of arguments. However, the LRs of the plaintiff specifically averred that the fact that the said properties are also subject matter of the Will deed came to their knowledge recently when the defendant No.1 produced the Will deed in the evidence.

9. The counsel for defendant has relied on the Judgments reported in ***ILR 1996 Kar 1067, AIR 2001 SCC 2607, AIR 2007 SCC 1487, ILR 1993 Kar 2072 and 2021 (4) KCCR 3034.***

10. In the Judgment referred above i.e., ILR 1993 KAR 2072, the Hon'ble High Court of Karnataka held that amendment application filed after lapse of period of limitation is impermissible. In the Judgment reported in ***2021 (4) KCCR 3034***, the Hon'ble High Court of Karnataka held that any right do assert, must be made within the period of limitation. Insofar as the amendment of the pleading is concerned, amendment cannot be allowed when it inserts there was cause of

action that is not allowed. When it changes the nature of the case and when it takes away the right already vested in the other party.

11. The instant suit is for the relief of declaration and injunction. The plaintiff herein claiming the ownership over the suit schedule property and now his LRs want to get insert two more properties. Insofar as the limitation is concerned, they specifically stated that the fact that the proposed properties are subject matter of the will came to their knowledge only after production of Will deed by the defendant No.1. On this point of view, the cause of action to them arose very recently. Furthermore, the proposed amendment will not change the nature of the suit.

12. At this juncture, I would like to quote the Judgment of Hon'ble Apex Court of India reported in **(2015) 4 SCC 182**, wherein, the Hon'ble Apex Court of India held that amendment application should normally be allowed, unless by virtue of amendment nature of the suit is changed or some prejudice would cause to defendant. In the Judgment reported in **(2011) 12 SCC 268**, wherein, the Hon'ble Apex Court of India held that normally amendments should be allowed to avoid multiplicity of litigations. Where the application is filed after commencement of the trial, it must be shown that

in-spite of due diligence such amendment would not have been sought earlier. The amendment should be rejected, if it would introduce totally new and inconsistent case.

13. As discussed above, by inserting two more properties in the plaint, the nature of the suit will not be changed. The LRs of the plaintiff specifically averred that they came to know about the properties are subject matter of the Will deed very recently as discussed supra. So it may be inferred that there was no any intentional delay in filing the application. Under such circumstances, if application is allowed, no harm or prejudice would cause to other side. On the other hand, it will be helpful to both the parties to the suit to get settle their dispute once for all. The objection of defendant No.1 may be compensated by imposing reasonable cost of the LRs of the plaintiff. **Accordingly, I answer point No.1 in Affirmative.**

14. **POINT NO.2:** For the reasons and above discussion, I proceed to pass the following:

### **O R D E R**

The application filed by the LRs of the plaintiff under order 6 rule 17 of CPC is hereby allowed on cost of Rs.5000/-.

The LRs of the plaintiff are permitted to carry out amendment of the plaint as prayed in the application.

Since the matter is of the year 2016, both parties to the suit are directed to co-operate with the court for speedy disposal of the case.

To carry out amendment and to furnish amended plaint.

Call on:

SD/-  
**(VAIDYA SHREEKANT)**  
SENIOR CIVIL JUDGE & PRL. JMFC.,  
TARIKERE.