

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND**  
**J.M.F.C., AT TARIKERE**

Present : Sri RAMAMURTHY N. B.A., LL.B.,  
Addl. Civil Judge & JMFC. Tarikere.

**O.S.No.114/2015**

**Dated:30<sup>th</sup> August 2019.**

Plaintiffs : Jabar Khaleel and another  
(Reptd. by : Sri S.N.R. Advocate )  
-Vs-  
Defendant : T.G.Manjunath  
(Reptd. By : Sri C.S.S. Advocate)

**I.A.No.7**

Applicant in I.A/: T.G.Manjunath  
Defendant

**-Vs-**

Opponent in IA: Jabar Khaleel and another  
Plaintiffs

**ORDERS ON IA.NO-7**

The defendant has filed I.A.No.7 U/O.6 Rule 17 R/W. 151 of CPC prayed for amendment of written statement as stated in the application.

2. In support of the I.A. the defendant has filed his affidavit stating that, he had filed the written statement in the above case. he had taken a contention in the statement regarding the land in Sy.No.43, its acquisition and the sales made by the original owner and also sought for permission to file additional statement or to seek amendment to the one filed.

3. Further, plaintiff who alleges that, he has purchased the land from Narayana Rao S/o Tukarama Rao who in turn has purchased the same from Prasanna S/o Rama Rao had not furnished the sale deeds in order to verify at the time of filing of statement. on verification of the sale deeds and also the previous sale deeds of original owner Virupakshappa S/o Mallappa the vendor of plaintiff had no right to sell the property as bounded. In order to high light the above he has sought to include the same in the written statement. He could not lay his hands on several documents highlighted by plaintiff since the same was not furnished and as such he could not include the same in the statement.

4. Further, non-inclusion of the same in the statement is not intentional one and on the other hand, for the bona fide reasons. If the application is allowed an opportunity is given to amend the statement, no hardship or injury will be caused to the plaintiff. On the other hand, the same will clear the lacuna. If he not allowed to amend the statement he will be put to more hardship and injury. Hence, this application.

5. The plaintiffs have resisted the I A filed by the defendant by filing objection and stated that, on 01/12/2016 in this defendant filed the detailed written statement, after filing of the written statement. This court has framed the is sues. After framed of the issues this court submitted the plaintiff to give evidence. The plaintiff evidence has already completed and documents has been mark, the defendant cross examine the P.W.1. After the cross

examination of the P.W.1, the defendant come up with this false application. It is submits that, at the time of filing of the suit, the plaintiffs furnished all the relevant documents including the sale deed of the plaintiff and the previous sale deed of the original owner. This defendant come up with this false application, after the trial beginning. The self prepared by the advocate is not proper, without any right or without any documents this defendant furnished through sketch in respect of Sy.No.43.

6. Further, the suit filed by the plaintiffs against to the defendant for permanent injunction in respect of the suit schedule property. Permanent injunction suit, the title of the other parties cannot be looked into injunction suit. What is stated in the para No.10 of the written statement is against to the proposed amendment G. The other averment made in the amendment written statement H, I, J, K, L, M is against to the earlier written statement filed by the defendants. In fact, this defendant denied the title of the vendor of the plaintiffs. The amendment sought by the defendant is against to the law and probabilities of the case. The present amendment is introducing the new case on hand. After the trial has to commenced the amendment application cannot be allowed.

7. Heard both side and perused the materials in hand.

8. The following points are arises for consideration:-

**1. Whether the defendant has made out sufficient ground to allow the application?**

**2. What order?**

9. Findings on the above points are as follows:-

Point No.1 : In the affirmative

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

### **REASONS**

10. **Points No.1** :The present suit is for permanent injunction filed by the plaintiffs against defendant and present I.A. for amendment of written statement filed by the defendant.

11. In support of the I.A. the defendant has filed his affidavit stating that, he had filed the written statement in the above case. he had taken a contention in the statement regarding the land in Sy.No.43, its acquisition and the sales made by the original owner and also sought for permission to file additional statement or to seek amendment to the one filed.

12. Further, plaintiff who alleges that, he has purchased the land from Narayana Rao S/o Tukarama Rao who in turn has purchased the same from Prasanna S/o Rama Rao had not furnished the sale deeds in order to verify at the time of filing of statement. on verification of the sale deeds and also the previous sale deeds of original owner Virupakshappa S/o Mallappa the vendor of plaintiff had no right to sell the property as bounded. In order to high light the above he has sought to include the same in the written statement. He could not lay his hands on several documents highlighted by plaintiff since the same was not

furnished and as such he could not include the same in the statement.

13. Further, non-inclusion of the same in the statement is not intentional one and on the other hand, for the bona fide reasons. If the application is allowed an opportunity is given to amend the statement, no hardship or injury will be caused to the plaintiff. On the other hand, the same will clear the lacuna. If he not allowed to amend the statement he will be put to more hardship and injury. Hence, this application.

14. On other hand the plaintiffs have stated in objection that, on 01/12/2016 in this defendant filed the detailed written statement, after filing of the written statement. This court has framed the issues. After framed of the issues this court submitted the plaintiff to give evidence. The plaintiff evidence has already completed and documents has been mark, the defendant cross examine the P.W.1. After the cross examination of the P.W.1, the defendant come up with this false application. It is submits that, at the time of filing of the suit, the plaintiffs furnished all the relevant documents including the sale deed of the plaintiff and the previous sale deed of the original owner. This defendant come up with this false application, after the trial beginning. The self prepared by the advocate is not proper, without any right or without any documents this defendant furnished through sketch in respect of Sy.No.43.

15. Further, the suit filed by the plaintiffs against to the defendant for permanent injunction in respect of the suit schedule property. Permanent injunction suit, the title of the other parties

cannot be looked into injunction suit. What is stated in the para No.10 of the written statement is against to the proposed amendment G. The other averment made in the amendment written statement H, I, J, K, L, M is against to the earlier written statement filed by the defendants. In fact, this defendant denied the title of the vendor of the plaintiffs. The amendment sought by the defendant is against to the law and probabilities of the case. The present amendment is introducing the new case on hand. After the trial has to commenced the amendment application cannot be allowed.

16. Upon perusal of the materials in hand, it is appeared that, the defendant has seriously disputing the suit property and possession of the plaintiff over suit schedule property. He has intend to add some facts through amendment in his written statement with regard to suit schedule property.

17. According to **Rule 17 of Or.6 CPC**, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that, no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of trail.

18. According to above said provision, court may permit the party to amend his pleadings at any stage of the case before

commencement of trial. In the present case, the stage is for cross of P.W.1. Already trial has been commenced.

19. The counsel for plaintiffs argued that, the suit is for bare injunction burden lies on plaintiffs to prove their case and already defendant has filed detailed written statement, hence proposed amendment not necessary to adjudicate the matter.

20. The counsel for defendant has argued that, the proposed amendment in written statement is very necessary to adjudicate the matter, hence he prayed for allow the application. In support of his contention, the defendant counsel coated decisions of the Hon'ble Apex court of India. The said decisions reads as follows-

**ILR 2007 KAR 2590-Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others.-**  
*(A)CIVIL PROCEDURE CODE (5 OF 1908), O.6, R-17*  
*Amendment of written statement-Substitution of defence or taking of inconsistent plea through amendment -Permissible.-A prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has not counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking*

*inconsistent pleas in the written statement would not be objectionable while adding altering or substituting a new cause of action in the plaint may be objectionable. In the case of amendment of a written statement, the Courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case*

*AIR 1995 SUPREME COURT 1498-Akshaya Restaurant, Vs. P.Anjanappa and another.-CIVIL P.C.(5 of 1908), O.6, R.17-Amendment of pleadings-Averment in plaint taking definite stand that defendant had entered into agreement for sale of suit land with defendant-Application for amendment seeking to modify averment that defendant had entered into agreement with plaintiff for development of suit land-Order allowing application held, not illegal.*

21. By considering the observation made in the decision coated by the defendant counsel, opinion of this court is that, it is proper to allow the amendment of written statement as stated in the I.A. Hence, the I.A. filed by the defendant is liable to be allowed. Accordingly, the defendant is made out sufficient ground to allow the application. Therefore this court answered point No.1 in the affirmative.

**22. Point No.2:-** For the above reasons and answer given to the point No.1, proceed to pass the following:-

**ORDER**

The application filed by the defendant U/O.6 Rule 17 R/W.151 of CPC is hereby allowed.

The defendant is hereby directed to carryout the necessary amendment and furnish the amended written statement within 14 days from this order.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the day of 30<sup>th</sup> August 2019.)

Sd/-

**(RAMAMURTHY N.)  
ADDL.CIVIL JUDGE & J.M.F.C.,  
TARIKERE.**