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

-:: PRESENT ::-

**SRI. SHIVAKUMAR.R, B.A.L., LL.B.,
CIVIL JUDGE & ADDL. JMFC.,
TARIKERE**

Dated: 7th Day of December 2023

O.S.No.37/2017

Plaintiffs :

**Sri. Kariyappa,
S/o. Late. Sri. Mallappa,
Dead by his Lrs**

**1(a). Sri. Ramachandra.V.K,
S/o. Late. Sri. Kariyappa,
Aged about 44 years,**

**1(b). Sri. V.K. Lokesh,
S/o. Late. Sri. Kariyappa,
Aged about 38 years,**

**1(c). Sri. V.K. Krishnamurthy,
S/o. Late. Sri. Kariyappa,
Aged about 33 years,**

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**1(d). Smt. Basamma**

W/o. Late. Sri. Kariyappa,
Aged about 65 years,

All are agriculturists,
R/o. Veerapura Hosur,
Ajjampura Hobli,
Tarikere Taluk,
Rep. By his GPA holder
plaintiff No.1(a)
Sri. V.K. Ramachandra,

(By Sri T.L.P. Advocate.)**Vs****Defendants :****1. Smt. Laxmamma,**

W/o. Sri. Vitalappa,
Aged about 50 years,

2. Sri. Vitalappa,

S/o. Late. Sri. Puttanna,
Aged about 60 years,

The defendant No.1 and 2
are agriculturists,
R/o. Veerapura Hosuru,
Ajjampura Hobli,
Tarikere Taluk.

(By Sri G.N.C. Advocate.)

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**PARTIES TO I.A.NO.XIV**

Applicants : **Smt. Laxmamma and another**

Vs.

Opponent : **Sri. Kariyappa**

ORDER ON I.A.NO.XIV

The defendants have filed this I.A., when the matter is set down for arguments on merits.

2. The defendants have filed the instant I.A., under Order VI Rule 17 r/w Section 151 of CPC and pleaded to permit them to amend the written statement as sought in the I.A.

: PROPOSED AMENDMENT :

5) At written statement in para No.11(b) it is to be amended as 31 x 17 instead of 31 x 12.

3. The I.A., is supported with the affidavit of the SPA holder of the defendants. It is stated in the affidavit that, at the filing of written statement of defendants, due to typographical error and due to inadvertence and lack of knowledge of the defendants, in the written statement the measurement of the property of the defendants wrongly mentioned as 31 x 12 instead of 31 x 17. It is a bonafide mistakes and not an intentional one. If the proposed

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amendment is not allowed, they will be put to untold hardship and injury and further the proposed amendment sought for will not change the nature of the suit and proposed amendment is necessary to adjudicate the real dispute in question. Hence, this application.

4. The copy of the I.A., served to the other side. The plaintiff has filed detailed objections and resisted the I.A., filed by the defendants and interalia contended that, the application filed by the defendants is not maintainable either in law or on facts. It is further contended that, after completion of pleadings, this court framed the issues on 16.08.2017 and posted the case for plaintiff evidence on 25.09.2017 and on 09.01.2018 plaintiff got examined as PW.1 and after several adjournments the defendant didn't come forward to cross-examine the PW.1 and on 11.07.2022 cross of PW.1 was taken as nil and posted the case for defendant evidence. On 18.07.2022 the defendant filed application to recall the PW.1 and the same was allowed on cost and cross examined the PW.1 and plaintiff closed his side evidence and this court posted the case on 29.07.2022 for defendant evidence. After several adjournments on 28.08.2022, the defendant No.2 got examined as DW.1 and posted for further chief of DW.1 to 06.09.2022, 19.09.2022, 25.10.2022, 28.11.2022, 13.12.2022 and 09.01.2023.

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5. It is further contended that on 09.01.2023, the counsel for defendant has filed an application seeking to permission to lead defendant evidence through S.P.A holder of defendant No.2. The said application was allowed on cost one Thippesha filed affidavit and got examined as DW.2 and seek time to lead further evidence. On several adjournments the S.P.A holder of defendant didn't come forward to lead further chief examination and 13.06.2023 his evidence was taken as Nil and posted the case for arguments.

6. It is further contended that, on 27.06.2033 again the defendant filed application to reopen and recall the DW.2 for further chief examination and on 10.07.2023 same was allowed to lead further examination on cost. Instead of leading further chief-examination, the defendants filed L.A.No.14 seeking amendment to the written statement by deleting the measurement as shown in the written statement in Para 11 (b) as 31 X 17 instead of 37 X 12.

7. It is further contended that, the admission made in the written statement and also affidavit shown by the defendant No.2-Vittalappa and his S.P.A holder-Thippesha cannot be allowed to be withdrawn and such withdrawal could amounts to displacing the case of the plaintiff and causing irreparable prejudice. The amendment sought for is nothing but introducing new facts by withdrawal of earlier

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admissions which does not inspire in the case put forth by the defendants.

8. It is further contended that, the evidence of the parties has already commenced as long as back 09.01.2018 and the Lrs No.1 of plaintiff got examined as PW.1 and got cross examined. When the defendants already tendered evidence and got examined the defendant No.1 as DW.2 and also examined the SPA holder of the defendant No.2 as D.W.2 and trial is to be closed after cross-examining them. At the fag end of the proceedings and at this belated stage, the amendment cannot be allowed. It is further contended that, the affidavit filed in support of the application is cryptic and there is absolutely no averments with regard to the due diligence exercised by the defendants, which is one of the primary aspects which requires consideration as per the provision contained under order 6 rule 17 of C.P.C. Thus, viewing from any angle the amendment is opposed in the nature of substituting the written stamen which had been filed at the first instance. For all these grounds, the plaintiff prays for to reject the I.A., with exemplary cost.

9. Heard arguments on both sides. The learned counsel for the plaintiff has relied upon the decision rendered by the Hon'ble Apex Court of India in the case of **Pandit Malhari Mahale Vs. Monika Pnadit Mahale and others**, reported in

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(2020) 11 SC 549 and order copy of the Writ Petition No.6462 of 2018 (GM-CPC).

10. On perusal of the rival contentions and other materials placed on record, the following points that would arise for my consideration are :

- 1) Whether the I.A.No.XIV filed by the defendants is deserves to be allowed and whether the amendment sought by the defendants is very much necessary to determine the real controversy between the parties?
- 2) What order?

11. My 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

12. POINT NO.1 : On perusal of the materials available on record, admittedly the plaintiff has filed present suit against the defendants for the relief of declaration to declare that he is the absolute owner of the suit 'A' schedule property and for delivery of the possession of plaint 'B' schedule property and for mesne profits. When the matter is set down for arguments on merits, at this stage, the defendants have moved this I.A., and sought for to permit them to amend the written statement as sought in the I.A.

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13. It is the urge of the defendants that, while filing the written statement, due to typographical error and due to inadvertence and lack of knowledge of the defendants, in the written statement the measurement of the property of the defendants was wrongly mentioned as 31 x 12 instead of 31 x 17 and hence, the proposed amendment is very much necessary for proper adjudication of the matter. On the other hand, the plaintiff contended that, in the instant suit, already evidence was commenced and now the above matter posted for arguments on merits, at this belated stage I.A., filed by the defendants is devoid of merits and hence, prays to reject the I.A., filed by the defendants.

14. At this juncture, I would like to refer Order VI Rule 17 of CPC which reads as follows :

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 trial.

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On perusal of the aforesaid provision, it is clear that the parties to the suit are permitted to bring forward amendment to their pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between them. If such application is made after commencement of the trial, in that event, the court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. In the instant suit, the matter is set down for arguments on merits.

15. The learned counsel for the plaintiff to substantiate the contention of the plaintiff, he has relied upon the decision rendered by the Hon'ble Apex Court of India in the case of **Pandit Malhari Mahale Vs. Monika Pnadiit Mahale and others**, reported in **(2020) 11 SC 549**, wherein the Hon'ble Apex Court held that:

It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

16. I would like to refer the another decision rendered by the Hon'ble Apex Court of India in the case of **Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others**, the

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same is reported in **(2006) 4 SCC 385, wherein the Hon'ble Apex Court of India** held that:

The court should allow the amendment would be necessary to determine the real question of the controversy between the parties, but the same indisputably would be subject to the condition that no prejudice is caused to the other side.

17. The another decision of Hon'ble Apex Court of India reported in **2019 SCC On-line SC 194** between **M.Revanna Vs. Anjinamma**, pleased to explained under what circumstances an application for amendment of pleadings filed after commencement of trial can be allowed. The Hon'ble Apex court of India pleased to held that,

“though normally amendments are allowed in the pleadings to avoid the multiplicity of litigations, the court need to take consideration whether the application for the amendment is bonafide or malafide and whether the amendment caused such prejudice to the other side which cannot be compensated in terms of money”.

The ratio laid down in the aforesaid decisions are aptly applicable to the present case on hand. Admittedly it is a suit for declaration and recovery of possession against the defendants in respect of the suit schedule properties. In a suit for declaration and injunction the burden of proof if always lies upon the plaintiff to prove his title over the suit schedule

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property by adducing cogent and credible evidence. In the instant suit, the defendants have sought amendment of written statement in para 11(b) is to be amended as 31 x 17 feet instead of 31 x 12 feet. At this stage, to substantiate the said contention of the defendants, they have produced assessment tax register extract. The judgment relied by the plaintiff as stated supra are not helpful to the contentions of the plaintiff. On perusal of the rival contentions of the both parties and other materials placed on record, this court has to arrive at conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. It is very pertinent to note that, on perusal of the materials available on record, the proposed amendment sought by the defendants in the written statement is very much necessary to determine the real question in controversy between the parties. If the proposed amendment is allowed, it will not change the nature of the suit and also cause of action. If the application is allowed, there is no harm caused to the other side. For considering all these reasons, I answer Point No.1 in the '**Affirmative**'.

18. POINT NO.2 : In view of my findings on Point No.1, I proceed to pass the following :

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**ORDER**

I.A.No.XIV filed by the defendants under Order VI Rule 17 r/w Section 151 of CPC is hereby allowed on payment of cost of Rs.500/-.

The defendants are hereby directed to carry out the necessary amendment in the written statement and to file amended written statement copy in time.

(Dictated to the Stenographer on computer, typed by him corrected by me and then pronounced in the open Court, on this the day of **7th day of December 2023**)

Sd/-

(Shivakumar.R)
Civil Judge & Addl. J.M.F.C.
Tarikere

SAR