

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND J.M.F.C.,
AT KOLLEGALA**

:PRESENT:

SMT.NANDINI.M.N, B.A.LLB.,
Prl.Civil Judge and JMFC.,
Kollegala.

Dated this the 11th day of January 2023

F.D.P. NO.6/2020

Petitioner: Smt. Pathamma dead by Represented by LRs
Smt. Nagarajamma & another

(By Sri M. Mahadeva Prasad, Advocate)

V/s

Respondents: Sri Narashimamurthy dead by represented by LRs
Smt. Ningamma & others

(By Sri S. Rudraradhya and S. Shashibimba , Advocate)

**ORDER ON IA NO.VII FILED U/O VI RULE 17 R/W SECTION 151
CPC**

The petitioner has filed this application under Order VI Rule 17 r/w Section 151 of the Code of Civil Procedure seeking permission to amend the petition as sought for in the application.

2. The petitioner has sworn to an affidavit accompanying application. In the affidavit accompanying the IA.No. VII amending the title of the application by deleting the XX Rule 1

and 2 of the Code of the civil Procedure and insert the XX Rule 18 of the Code of Civil Procedure. It is further averred that the proposed amendment is necessary for the complete adjudication of the matter and delay in filing the present application is not intentional one and the proposed amendment would not change the nature of the petition and on allowing the application no hardship would be caused to respondents and if application is not allowed he will be put to irreparable loss and hardship. Hence, he prayed to allow the application.

3. On the other hand, the counsel for respondents have filed a detailed objection opposing the application and submitted that the application is not maintainable either under law or on facts and same is liable to be rejected and contended that though prayer sought in the application seems to be simple but the mistake sought to be corrected is against to the documentary evidence already on record. They further contended that the petitioner has not assigned a proper reasons for non filing of present application. The proposed amendment is not necessary for the purpose of determination of real question in controversy between the parties. For all these reasons, he sought for rejection of the application.

4. Heard arguments of both sides. Perused the materials on record. The following points arise for my consideration:

1. Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?
2. Whether IA filed by the petitioner for amendment of petition deserves to be allowed?
3. What order?
5. My answer to the above points are as under

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: As per final order for the following:

REASONS

6. Point No.1 and 2:- It is the contention of the counsel for the petitioner that when the above matter was posted for to hear on application VII, while going through the documents submitted by both the parties it came to their knowledge that At the time of the filing the above final decree proceeding amending the title of the application by deleting the XX Rule 1 and 2 of the Code of the Civil Procedure and insert the XX Rule 18 of the Code of Civil Procedure. As such, it is necessary to amend the same in the petition and the proposed amendment is necessary for determining the real questions in controversy between the

parties. On the other hand, the counsel for respondents have argued that petitioner has filed this present application after lapse of 2 years, that too when the matter is posted for to hear on application and same cannot be allowed. He further argued that though prayer sought in the application seems to be simple but the mistake sought to be corrected is against to the documentary evidence already on record and contrary to the pleadings already on the record as such the proposed amendment is not permissible under law.

7. The provision regarding the amendment is contained in Order VI Rule 17 of the Code of Civil Procedure. It is useful to refer the said provision which reads as follow:

17. Amendment of pleadings:- 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.

8. Thus, a careful reading of the above provision makes it clear that all amendments ought to be allowed which satisfy the conditions that not working injustice to the other side and of being necessary for the purpose of determining the real question in controversy between the parties. However, post trial amendment is restricted by the proviso to the said provision.

9. Further in the matter of **State of Andra Pradesh and others V/s M/s Pioneer Builders reported in (2006) 12 SCC 119 the Hon'ble Supreme Court held that** *“Though amendment of pleading cannot be claimed as a matter of right under all circumstances, yet the power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. Unless serious injustice or irreparable loss is likely to be caused to the other side, the court should adopt liberal approach and not a hyper-technical approach, particularly in a case where the other side can be compensated with costs. Dominant object of allowing amendment of pleading is to avoid multiplicity proceedings. However one distinct cause of action cannot be substituted for other not the subject matter of the suit can be changed by means of an amendment.”* Further in the matter of **Mohinder Kumar Mehra Vs Roopa Rani Mehra and others in Civil Appeal No.19977 of 2017** the Hon'ble Supreme

Court held that *“It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.”* Thus, it is clear that object of allowing an amendment is to avoid the multiplicity of proceedings and the court shall liberal in allowing the amendment application.

10. The petitioner want to amend the amending the title of the application by deleting the XX Rule 1 and 2 of the Code of the civil Procedure and insert the XX Rule 18 of the Code of Civil Procedure in the petition. The proposed amendment is no way changes the cause of action or nature of petition. It is the contention of the respondents that the proposed amendment is opposed to the documentary evidence on record as such same is not permissible. It is pertinent to note that mere amendment of pleading does not itself prove the case of the party but they should prove the said facts independently by cogent The prominent object of the amendment is to avoid the multiplicity of proceedings. In

catena of judgments the Hon'ble supreme court and High courts have held that the trial court shall liberal in allowing the amendment application unless injustice caused to the other side. If the said application is not allowed it would lead to multiplicity of proceedings.

11. Further, if the proposed amendment is allowed no injustice would be caused to the respondents and it is necessary to allow for complete adjudication regarding dispute between parties. Hence, the I.A. No.VII filed by petitioner is hereby allowed. In the result, I proceed to pass the following -

ORDER

IA No.VII filed by the petitioner under Order VI Rule 17 R/w Section 151 of Code of Civil Procedure is allowed.

The petitioner is permitted to carry out the amendment as sought for in the application.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the **11th Day of January 2023**).

(Smt. Nandini.M.N)
Prl. Civil Judge & JMFC.,
Kollegala.

(Vide separate Order pronounced in Open Court)

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under Order VI Rule 17 R/w Section 151
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