

KADG220013962019



**IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.,**  
**CHANNAGIRI**

**:: Present ::**

**Shri. Siddalingayya B.Gangadharamath**  
**B.Com. L.L.B.,(Spl)**  
**Prl. Civil Judge & J.M.F.C.,**  
**Channagiri.**

**O.S.No.217/2019**

**Dated this the 22<sup>nd</sup> Day of February 2023**

**PLAINTIFF** : Sri.T.M.Basavarajappa  
**(By Shri.Y.M.R., Adv.,)**

**V/s**

**DEFENDANT** : Sri.Veerupakshappa  
**(By Shri. B.R.M., Adv.,)**

**I.A.No.VI**

**Applicant/Defendant:** Sri.Veerupakshappa

**V/s**

**Opponent/Plaintiff** : Sri.T.M.Basavarajappa

**ORDER ON I.A.NO.VI FILED BY PLAINTIFF U/O.6 RULE 17  
OF CPC**

The defendant has filed the instant application U/O 6 Rule 17 R/w Sec. 151 of CPC at the stage of cross examination of PW.1.

**2. Some and substance of the affidavit as under:**

The defendant has sworn the affidavit and stated on oath that, the plaintiff filed the instant suit for the relief of permanent injunction against him in respect of the suit schedule property is concerned. Suit schedule property was belonging to his uncle Dyamappa and it is situated at hind portion of defendant's residential house. It is compromised under kathe No.58. Plaintiff described the suit property with false and fabricated boundaries as well as documents. The suit property is in deed the ancestral property of defendant's family. As the defendant was not in possession of the panchayath records as on the date of filing written statement and he obtained the same recently and as such, he wanted to incorporate those facts in the written statement. If, the application is allowed nothing would affect to nature of suit, cause prejudice or loss to plaintiff. The said amendment is essential for the just adjudication of the matter. Thus, the defendant prays to allow the application.

**3. Statement of objection filed by the plaintiff as under:**

The plaintiff denied the entire contents of affidavit filed in support of application and has submitted that, it is not maintainable under law or on facts, at belated stage. The application is full of myth and therefore is liable to be dismissed. The defendant has not produced any documents with reference to statement made in the application and proposed amendment. The suit is with respect to property bearing assessment No.73, which was purchased in the year 1987. The application on hand is to protract the matter and nothing more and as such, it is liable to be dismissed. the proposed amendment would introduce new set of facts and as such it is liable to be dismissed with heavy cost.

4. Based on rival contentions raised by the plaintiff and the defendant, the following points would arise for my consideration:

**POINTS**

1. Whether defendant proves that, inspite of due diligence he could not have raised the matter before commencement of trial?
2. What Order?

5. Heard the learned counsels appearing for the plaintiff and the defendant. Perused the records. On perusal of the same my findings to aforesaid points as under:

**POINTS**

POINT NO.1 : In the Affirmative,

POINT NO.2 : As per final order for the following:

**REASONS**

6. **Point No.1:** Before taking note of rival contentions of application and the statement of objection, it is trite to note facts of case on hand. The plaintiff asserted his title and possession in and over the suit schedule property on the basis of registered sale deed dt:10.03.1987, which is bearing SR No.2623/1986-87. He also claimed possession and to sustain it has referred panchayath records, which are maintained in his name. Plaintiff stated that, he is utilizing the suit property for khana and kheni mane. He also used to collect hay-stock manure and such other agricultural implements, cattle shed. He succeeded the suit property from his father and mother, who died about 15 years back and thereafter his name came to be mutated in panchayath records of suit property. The suit property was compromised under K.No.73 and it is now bearing new Kaneshumari No.177. His sister was married and is at her husband's place. The defendant issued legal notice and which

was suitable replied by the plaintiff. By that attempts, the defendant tried to interfere in peaceful and lawful possession of plaintiff over suit property and which was in the 2<sup>nd</sup> week of October 2019, that too with the aid of supporters and as such he filed this suit.

7. The defendant appeared and filed written statement, traversed the facts narrated under the plaint as all false. The defendant has made out case of non joinder of necessary parties, non discloser of material facts and has denied title of plaintiff. The defendant sets up title into suit property as it is his ancestral property and also contended that, the plaintiff owed an intention to gulf it. By these set of defences, the defendant prays to dismiss the suit.

8. It is well settled law that, though an amendment can not be claimed as matter of right under all circumstances, yet the power to allow the 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 hypertechanical approach, particularly in a case where the other side can be compensated with costs. In the case on hand also, no serious injustice would be caused to the plaintiff or no such displacement of his case will be accrued, if the permission to amend written statement is accorded. The plaintiff will be

suitably compensated in terms of reasonable cost also for delayed ratification.

9. Having taken note of pleadings of the parties, it is appropriate to note on the proposed amendment. By proposed amendment, the defendant intends to add certain facts in the written statement and wherein, he elaborated, the facts which are already narrated in his written statement. The defendant in the proposed amendment stated that, the plaintiff by placing false boundaries, false assessment number, in collusion with panchayath authority created documents in order to cheat the defendant and engulf peace of property covered under assessment No.58, which was belonging to his uncle.

10. The reasons stated by the defendant can be gathered from paragraph No.3 of affidavit filed in support of application. He categorically stated that, he got knowledge of existence of property bearing assessment No.58, in the name of his family members through the panchayath records, which were obtained recently. The defendant has also filed I.A. No.5 under Order 17 Rule 1 and 2 of CPC and along with that application, he filed memo, the notice issued by the Manager of Taluk panchayath, Channagiri to the PDO Grama Panchayath, Mudigere to furnish the documents sought by the defendant with reference to property bearing assessment No.73. Said document is dt: 13.09.2022.

11. The defendant's legal notice is also the cause of action to file the suit and which is at Ex.P-6. In that also, the defendant cleared that, he and his family is owing the property bearing K.M.No.56 and alleged thereunder that, the plaintiff intends to usurp the said property by crating E-swathu to K.No.177's property. The similar fact is pleaded in the written statement and the similar fact is narrated in RTI application and it elaborated in I.A.No.6 or the proposed amendment. Thus, in my considered opinion, the proposed amendment in any way affect the cardinal principles of amendment.

12. The reasons mentioned in application, on considering the documents referred above, it appears to be probable and genuine. The defendant stated that, he was not in custody of relevant documents at the time of filing of written statement and that could be met his inability to rise such plea before the commencement of trial. Thus, the defendant has satisfactorily explained that, inspite of due diligence, he could not have raised the matter before commencement of trial. The plaintiff raised the objections as the property referred in the proposed amendment portion and the suit schedule properties are not one and the same. However, this aspect of the matter can be gathered or considered or determined at the time of trial. The plaintiff has also raised the objection that no supporting documents have been placed. However, the defendant has

placed the requisition under RTI Act and replied by the concerned authority prior to filing of this application. Thus, in view of the same, the objections raised by the plaintiff are no such of consequences to decline the claim of defendant. By these observations, the point No.1 held in the **Affirmative**.

13. **Point No.2**: As a result, I proceed to pass the following:

**ORDER**

**I.A.No.VI filed U/O.6 Rule 17 R/w  
Sec.151 of CPC by the defendant is hereby  
allowed with cost of Rs.200/-.**

**Consequently, the defendant is  
permitted to carry out the necessary  
amendments as per the schedule given under  
the application and submit the amended  
written statement accordingly.**

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and pronounced in the Open Court on this **22<sup>nd</sup> day of February 2023**)

Sd/-

**(Shri. Siddalingayya B. Gangadharamath)  
Prl. Civil Judge & J.M.F.C.,  
Channagiri.**