

KADG220013962019



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

:- PRESENT :-

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

Dated: This the 13th Day of February 2024

O.S.No.217/2019

PLAINTIFF : Sri. Basavarajappa

V/s

DEFENDANT : Sri. Virupakshappa

I.A.NO.XI

Applicant/Defendant : Sri. Virupakshappa

V/s

Opponent/Plaintiff : Sri. Basavarajappa

1.	Provision under which the application is filed	Under Order 6 Rule 17 R/w Sec.151 of CPC
2.	Relief sought for	Amendment of written statement

3	Date on which the application is filed	19.12.2023
4.	Number of the application	I.A.No.XI
5.	Date on which the objections are filed by different opponents	05.01.2024
6.	The date on which the orders is passed	13.02.2024

ORDER ON I.A.NO.XI

Defendant filed the instant application under Order 6 Rule 17 R/w Sec.151 of CPC seeking permission to amend the written statement. The same is filed at the stage of defendant evidence.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

The defendant has sworn and wherein he has stated on oath that, matter is set for the evidence of defendant. At that time, he came to know that some factual aspects are not clear in the pleadings and as such he requested the counsel to amend the written statement. The defendant has got some documents through panchayat and as such he is under obligation to prove that, the suit property is his ancestral property. If the application is not allowed, the defendant would loss his ancestral property and if it allowed no harm or prejudiced would

be caused to the other side. Thus, he prays to allow the application.

3. STATEMENT OF OBJECTIONS FILED BY THE PLAINTIFF AS UNDER:

The plaintiff filed the objection statement contending that, the suit is one for the relief of permanent injunction. The suit was posted for judgment and thereafter the defendant filed application along with written statement and recycled the matter from the stage of framing of issues and the recording of evidence once again. The defendant filed similar application on 22.11.2022 and which was allowed by this court. Thereafter, the necessary amendment was incorporated in the written statement. The defendant through the application would intend to introduced new set of facts and set up new case. Thus, the same is not permissible under law. The intention of the defendant is clear from the application that, he is no intrust to conclude the matter and want to dage it for his wish and will. Thus, the plaintiff prays to reject the application.

4. On the basis of application and objections of plaintiff, defendant, the following points arise for my consideration;

POINTS

1. Whether the defendant has made out sufficient grounds to allow the pleadings?
2. What Order?

5. Heard the learned counsels appearing for the plaintiff and the defendant. Perused the materials placed on record and my answer to above 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:-** At the out set, the plaintiff filed the suit asserting 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 of property 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 khieni mane. He also used to collect hay-stack, manure, such other agricultural equipments, 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 comprised under K.No.73 and it is now bearing K.No.177. His sister was married and she is at her husband's place. The defendant issued legal notice and which was suitably replied by the plaintiff. By that attempts, the defendant tried to interfere in peaceful possession of plaintiff over suit property and in the second week of October 2019, that too with the aid of supporters and as such he filed the suit.

7. The defendant appeared and filed the written statement traversed all the facts narrated under the plaint as 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 a title into suit property as it is his ancestral property and also contended that, the plaintiff owed an intention to gulf it. Further, the defendant got amended the plaint by incorporating the para No.10. As per the said amendment portion, the defendant has taken up contention that, the plaintiff is claiming the possession in and over the suit schedule property by mentioning the boundary of the property of defendant comprised in Khathe No.58. Thus, he prays to

dismiss the suit as it is not disclosing any cause of action against the defendant.

8. Having taken note of the pleadings of the parties, I would like to take note of certain events that were taken place in the interregnum period of filing this application and from the date of suit. The suit was instituted on 17.10.2019. The defendant appeared on 08.11.2019. thereafter, the defendant failed to file written statement and as such the evidence of plaintiff has been recorded and ultimately after giving sufficient opportunity the matter has been posted for judgment on 21.02.2022. The matter was reserved for judgment on 08.03.2022, the defendant filed application along with written statement. The same was entertained by this court to meet the ends of justice and equity and thereafter the matter posted for cross examination PW.1 on 04.04.2021. The defendant took adjournments for the cross examination of PW.1 on 09.06.2022, 21.06.2022, 11.07.2022, 26.07.2022, 16.08.2022, 05.09.2022. In the meanwhile, the defendant engaged some other counsel and thereafter on 14.09.2022 and 27.09.2022 the defendant took adjournment for cross examination of PW.1 by filing application under Order 17 Rule 1 and 2 of CPC. All those applications were allowed on cost and permitted the plaintiff to

cross examine at later stage. On 12.10.2022 the defendant took time for cross examination and which was conseeded by this court on the ground of the final rituals of advocates father. On 22.11.2022 the defendant filed under Order 6 Rule 17 of CPC and which came to be allowed on 22.02.2023. Thereafter, amendment was carried out and amendment written statement was filed on 07.03.2023. Then matter posted for cross examination of PW.1 on 21.03.2023. Since 21.03.2023 to 20.06.2023 the defendant took time for cross examination and on that day filed I.A.No.VII under Order 16 Rule 15 R/w Sec.151 of CPC calling certain documents from the PDO of Grama Panchayat, Mudigere. The said application was allowed on 02.09.2023 and thereafter the defendant failed to pay the witness bata and the process fee to issue witness summons for getting the documents in accordance with the order passed in on I.A.No.VII. Thereafter, matter posted for further cross examination of PW.1 on 13.10.2023, 02.11.2023 and 08.11.2023. The defendant having opted such huge opportunities did not come forward to cross examining the PW.1 as such the prior of the learned counsel for defendant was rejected on 08.11.2023 and matter was posted for defendant evidence. When the matter posted for defendant evidence on 23.11.2023 the defendant filed I.A.No.8 and 9 for recall and

reopen of the plaintiff side. The same was also exceeded by this court to meet the ends of justice and equity with cost. Thereafter, the defendant took time for cross examination and on 28.11.2023 he completed the cross examination and on 06.12.2023 the matter was set for the evidence of defendant. On 19.12.2023 filed the application at hand for amendment. These sequential events denotes how the defendant is diligent is proceeding with the matter and his conduct towards the disposal of the suit at earliest point of time. The entire order sheet extracted above, replica of negligent manner of the defendant in prosecuting the case and therefore at should be taken into account while deciding the application at hand.

9. Having taken note of the events it is also material to refer the I.A.No.VI filed under Order 6 Rule 17 of CPC. The said application is also for the amendment of the written statement and through which the defendant has insulted paragraph at para No.9. having careful reading of proposed pleadings and also the incorporated portion through I.A.No.VI are one and the same and by virtue of the proposed pleadings the defendant intents to extensive lines which are not necessary for the suit at hand it is for the relief of perpetual injunction. Even if, the their had not claimed any counter claim with reference to the alleged

right in suit schedule property or the nature of the suit schedule property as it one ancestral character. The supporting affidavit of I.A.No.VI discloses that, some certain documents were not available at the time of filing the written statement and recently the defendant got the documents from the Grama Panchayat and as such he came to know certain facts with reference to the property khate No.58. Thus, he moved the application for the amendment. In addition to this I would like to take note of the affidavit filed in support of the application at hand. I am which discloses the similar ground also whereunder also the defendant has stated that, documents were got from the Grama Panchayat and as such the proposed application is moved. However, no such documents have been placed under what circumstances the application on hand is filed before the court. It is also quint essential point to note that, the defendant has not stated in the affidavit that, which have those documents made into file the application and incorporate the pleadings. However, the basic reason can be gathered from the affidavit paragraphs filed that, the clarity of pleadings. However, but it is not permissible.

10. Why this court has taken note of all these events to beside the application on hand is, the application is filed after

conclusion of the plaintiff side and after setting the matter for the evidence of defendant. The Order 6 Rule 17 of CPC qualified these provisos and as per the said proviso no application for amendment shall be allowed after the trial has commence unless the court comes to the conclusion that, inspite of due divisions, the party could not have raised the matter before the commencement of trial. The said test has to be conducted before the allowing application with it is filed after conclusion of trail or commencement of trial. In the case at hand, the first paragraph which is derogative of the conduct of the defendant since from the date of appearance and till filing of this application denotes is indulgence in prosecuting the proceedings are depending the suit. The application which have taken note of are also evinces the intention of the defendant to dodge the proceedings for his whims and fancies without any sustainable grounds. Further the affidavit filed in support of the application does not reveal such ground that could meet the requirement of proviso appended to Order 6 Rule 17 of CPC. Therefore, in my considered opinion the defendant is not diligent in bringing the proposed amendment at this stage inspite of the same as to be brought before the court at earlier stages or before commencement of trail. Even if the defendant having opted such opportunity while at I.A.No.VI has not brought the proposed

portion also and these all criterias leads to suspect the diligence of defendant. Therefore, in my considered opinion the application is been divide of merits and is nothing but protracting tactic by the defendant. Thus, the **point No.1** is held in the **Negative**.

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

ORDER

**I.A.No.XI filed U/O.6 Rule 17 R/w
Sec.151 of CPC is hereby rejected with
cost of Rs.500/-.**

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and pronounced in the Open Court on this **13th day of February, 2024**)

Sd/-

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