

KAKL400011642018



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

AT : MULBAGAL

DATED THIS THE 1ST DAY OF APRIL, 2024

:PRESENT:

SRI.NARASIMHA MURTHY M.

B.A.LLM., UGC – NET, JRF,
PRL. CIVIL JUDGE & JMFC, MULBAGAL

O.S.No.240/2018

PLAINTIFF/s : **Smt. Venkatamma** W/o Narayanappa
Aged About 50 years,
R/at Uthanuru Village,
Duggasandra Hobli,
Mulbagal Taluk.

(By Shri. **T.Rajavelu.,**
Advocate)

Vs

DEFENDANT/s : **Smt. Rathnamma** W/o Gangappa,
D/o Hanumanthappa,
Aged About 48 years,
R/at Uthanur Village
Duggasandra Hobli,
Mulbagal Taluk.

(By Shri. **P.V.Srinivasaiah.,**
Advocate)

PARTIES TO THE I.A. NO.XII**BETWEEN :** SMT. VENKATAMMA**.....APPLICANT/PLAINTIFF****Vs****AND :** SMT. RATHNAMMA**....RESPONDENTS/DEFENDANT**

* * * *

ORDERS ON I.A.NO.XII

The plaintiff has filed present I.A.No.XII under order 6 Rule 17 read with Section 151 of Civil Procedure Code., seeking permission to amend the plaint.

PROPOSED AMENDMENT :

To add item no.6 to 16 of the properties at page no.7 after item no.5 of the suit schedule property in plaint schedule column.

6. The land bearing Sy.no.34 totally measuring 0-19 guntas out of which 0-13 guntas of land bounded on

East by	:	Ramappa S/o Venkatappa
West by	:	Dhobi Venkataramaiah
North by	:	Bajanthri Inamthi
South by	:	Uthanuru Srinivas (Varadappa)

7. The land bearing Sy.no.56 measuring 2-00 acres 08 guntas out of which $9\frac{3}{4}$ guntas of land bounded on

East by : Panduranga S/o Venkateshappa
West by : Marappa S/o Munivenkatappa
North by : Bangappa
South by : Varadappa S/o Venkatappa

8. The land bearing Sy.no.125 measuring 0-19 guntas out of which $\frac{3}{4}$ guntas of land bounded on

East by : Somappa S/o Venkataramappa
West by : Rajakaluve
North by : Lakshmiddevamma W/o K.Erappa
South by : Marappa

9. The land bearing Sy.no.162 measuring 0-07 guntas out of which $0-\frac{3}{4}$ guntas of land bounded on

East by : D.P.Manjunatha
West by : Kulakarni and Prabhakar D.V.
North by : Susheelamma W/o Vishwanatha
South by : Kere

10. The land bearing Sy.no.235 measuring 1-00 acre 0-25 guntas out of which 02 guntas of land bounded on

East by : Kere
West by : Nagaraj S/o Lachappa
North by : Charan Kumar A S/o Anandappa
South by : L.Nagaraj S/o Lachappa

11. The land bearing Sy.no.278 measuring 3-00 acres 0-39 guntas out of which $0-81\frac{1}{4}$ guntas of land bounded on

East by : Kavalu Mypattha
West by : Venkataramappa
North by : K.V.Ramappa S/o K.Venkataramaiah
South by : Road

12. The land bearing Sy.no.295 measuring 2-00 acres 0-11 guntas out of which 0-03 guntas of land bounded on

East by : Road
West by : Marappa
North by : Ambarish S/o Srinivasa Shetty
South by : Rajakaluve

13. The land bearing Sy.no.320 measuring 3-00 acres 0-24 guntas out of which 11 ½ guntas of land bounded on

East by : Subramani S/o Subbarayappa
West by : Uthanuru Main road
North by : B.M.Narayanappa S/o Munivenkatappa
South by : Rajakaluve

14. The land bearing Sy.no.352 measuring 0-26 guntas out of which 0-03 guntas of land bounded on

East by : Kere katte
West by : M.Narayanaswamy S/o late N.Munivenkatreddy
North by : Venkataanarasimhachar
South by : M.Padma W/o A.Reddy

15. The house property bearing its property katha no.87/1 measuring East-West 16 feet & North-South 22 feet bounded on

East by : Naraynamma property
West by : Peechappanavara Prameelamma
North by : Chowdappa navara House
South by : Srinivasappa house

16. The vacant site property bearing its property no.87/2 measuring East-West 12 feet & North-South 22 feet bounded on

East by : Pillanjappa
West by : Rathnamma (house no.87/1)
North by : Venkatamma house

South by : vacant site property

Item no.1 to 3 of the properties are situated at V.Nagareddyhalli Village, Duggasandra Hobli, Mulbagal Taluk.

Item no.4 to 16 of the properties are situated at Uthanuru Village, Duggasandra Hobli, Mulbagal Taluk.

2. To delete the word schedule after the sentence i.e. “the landed properties are situated at V.Nagareddyhalli Village, Duggasandra Hobli, Mulbagal Taluk.

2. The plaintiff averred in the affidavit annexed to the application that, she has filed the present suit against the defendant for the relief of partition and other reliefs. Now the case is posted for cross-examination of PW1. At the time of filing of the suit some of the properties are not included in this suit. The said properties are joint family properties and nowkari inamthi lands. If this application is allowed, the nature and character of the suit will not be altered and also it will not alter the cause of action. The Sy.no.283 & Sy.no.151 properties sold by unknown persons to one Chandra S/o Narayanappa and N.Krishnappa S/o Nanjappa. The said properties are not stands in their family members name, other inamdars sold the said

properties. Hence, the plaintiff prays to allow the present application.

3. On the other hand, the defendant has filed objection to the present application, wherein, she has contended that, after lapse of more than four years the plaintiff has filed the present application with an intention to give trouble and to drag the proceedings. In the present case, this Court has framed issues and the plaintiff has adduced her evidence and further evidence. Now the present case is set down for cross-examination of PW1 to PW3. The plaintiff has filed this false application at belated stage to cause pinpricks to the defendant. Further, the defendant has filed Written Statement on 02.11.2019 and she has clearly stated in her Written Statement para no.10 that the plaintiff has not filed any necessary application to insert the properties. Now the plaintiff has filed this untenable application only with an intention to drag the proceedings. The present application is barred by time. Hence, the defendant prays to dismiss the present application filed by the plaintiff.

4. Heard and perused the materials available on record.

5. The following points arise for my consideration:

1. Whether, the amendment of the plaint sought by the plaintiff under order VI Rule 17 read with Section 151 of CPC., is necessary for the purpose of determining the real questions in controversy between the parties?

2. If so, what order?

6. My answer to the above points are as under:

Point No.1 : In the **AFFIRMATIVE**.

Point No.2 : As per the final order,
for the following :-

REASONS

7. POINT NO.1: The plaintiff has filed present suit against the defendant for the relief of her 1/2 share in the suit schedule properties and the registered will executed by the plaintiff mother Narayanamma to the defendant dated 19.09.1989 is not binding on the plaintiff's share.

During proceedings of the case, the plaintiff has filed present application seeking permission to amend the plaint.

8. The specific contention of the plaintiff is that, the plaintiff has filed present application seeking permission to amend the plaint and contended that, now the case is posted for cross-examination of PW1. At the time of filing of the suit some of the properties are not included in this suit. The said properties are joint family properties and nowkari inamthi lands. If this application is allowed, the nature and character of the suit will not be altered and also it will not alter the cause of action. On the other hand, the defendant has contended that, after lapse of more than four years the plaintiff has filed the present application with an intention to give trouble and to drag the proceedings. In the present case, this Court has framed issues and the plaintiff has adduced her evidence and further evidence. Now the present case is set down for cross-examination of PW1 to PW3. The plaintiff has filed this false application at belated stage to cause pinpricks to the defendant. The plaintiff has filed this untenable application only with an intention to drag the proceedings and tThe present application is barred by time.

9. This court has relying the decision reported in **(2009) 10 SCC 626 (Surender Kumar Sharma Vs. Makhan Singh)**

wherein the Hon'ble Supreme Court held that :

5. As noted hereinearlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and latches in making the application for amendment cannot be a ground to refuse amendment.

6. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where

the party against whom the amendment is to be allowed, can be compensated by cost or otherwise. [See B.K. Narayana Pillai Vs. Parameshwaran Pillai]. Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.

7. So far as the second ground is concerned i.e. the prayer for amendment of plaint, if allowed, shall change the nature and character of the suit, we are unable to accept this view of the High Court. We have carefully examined the amendment prayed for and after going through the application for amendment of the plaint, we are of the view that the question of changing the nature and character of the suit, if amendment is allowed, cannot arise at all. The suit has been filed for eviction inter alia on the ground of arrears of rent. It cannot be disputed that even after the amendment, the suit would remain a suit for eviction. Therefore, we are unable to agree that if the amendment of the plaint is allowed, the nature and character of the suit shall be changed. Accordingly, the High Court was not justified in holding that the nature and character of the suit shall be changed, if such prayer for amendment is allowed.

10. At this stage, it is proper to peruse the Order **VI Rule 17 of Civil Procedure Code.**, The order VI Rule 17 of CPC is reproduced as follows:-

"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 controversy between 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.)

11. In view of the above decision and provision, wherein, the purpose and object of the rules of the pleadings is to decide the real controversy between the parties and not to punish their mistakes, negligence or short comings. The Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before

the Court. The Court should not go into correctness of falsity of the case in the amendment while dealing with the application for amendment.

12. Further, the plaintiff submitted that, if the proposed amendment is not permitted she will be put to great hardship and injury. The present suit filed by the plaintiff for the relief of partition and separate possession with respect of suit schedule properties. In the proposed amendment the plaintiff seeking to add item no.6 to item no16 of the properties. On perusal of the records, the present application and objections, if this Court has not allowed this application it may lead to multiplicity of the proceedings. Further, it is just and proper to allow the application to determine the real question in controversy between the plaintiff and defendant. Hence, it is just and proper to compensate the plaintiff by imposing cost on the defendant. Therefore, I answer Point No.1 is in the **AFFIRMATIVE**.

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

ORDER

I.A.No.XII filed by the plaintiff under Order VI Rule 17 read with Section 151 of *Civil Procedure Code.*, is hereby allowed with cost of Rs.2,000/-.

Consequently, the plaintiff is permitted to amend the plaint and to furnish amended plaint on the next date of hearing.

*(Dictated to the Stenographer, transcribed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the **1ST day of April, 2024**).*

(NARASIMHA MURTHY. M)
PRL. CIVIL JUDGE & JMFC,
MULBAGAL.

ssm/*