

**IN THE COURT OF THE CIVIL JUDGE & JMFC,
JAGALUR.**

**Present: Sri. Thimmaiah G.
B.A. L.L.B.
Civil Judge & JMFC, Jagalur.**

Dated this the 13th day of January 2022

O.S. No.59/2018

**PLAINTIFFS: Smt.Rathnamma and another
(Represent By Sri.E.S.I. Advocate)**

V/s.

**DEFENDANTS: Smt.Bharathi N.M. and others
(Represented By Sri.M.T.T. Advocate)**

APPLICANT: Smt.Bharathi N.M.

V/s.

OPPONENTS: Smt.Rathnamma and another

ORDERS ON IA No.III

The defendant No.1 has filed this proposed amendment application, for amend in the written statement as shown in the schedule of this application and defendant No.1 pray for allow this application, in the interest of justice and equity.

**2. DESCRIPTION OF THE PROPOSED
AMENDMENT SCHEDULE;**

After last line in para No.6 in page No.4, insert as under:

The plaintiff No.1, through a registered gift deed dated 25.04.2014, had gifted two properties in favour of the plaintiff No.2. Those properties are agricultural lands bearing Sy.No.112/5, measuring acres 0-33 guntas and Sy.No.112/6, measuring acres 0-35 guntas, both situated at Diddige village, Bilichodu Hobli, Jagalur Taluk. In total, the defendant No.1 and gifted acres 1-28 guntas of land in favour of the plaintiff No.2. The plaintiff No.2 had got her share of properties, through this gift deed. The plaintiffs have cleverly concealed this fact before this Hon'ble Court. The plaintiffs have filed the present suit for partial partition. Hence, the plaintiffs are not having any share in the suit schedule properties.

3. The defendant No.1 filed this application with sworn affidavit and she has stated as follows;

I am the defendant No.1 in the above case, hence I know the facts of the case. At the time of filing of the written statement, due to oversight, defendant could not give very important information pertaining to the execution of registered gift deed dated by the plaintiff No.1 in favour of the plaintiff No.2 with respect to two agricultural lands and

hence this vital information is not mentioned in the written statement. Now, defendant came to know that this is very vital information to prove my defence in the above case and also for proper adjudication of the case and hence have filed the present application to make necessary amendment in the written statement.

Hence, this application is very necessary to defend the suit. If this application is allowed, no harm or injury will be caused to the other side. On the other hand, if this application is not allowed, defendant will be put to great hardship and a legal injury will be caused to me.

Wherefore, defendant No.1 has respectfully prayed that, this Hon'ble Court be pleased to permit me to make amendment in the written statement as shown in the schedule of the application and thereby allow the application in the interest of justice and equity.

4. On the other hand, plaintiff No.2 has filed her objection to the said application and she know the fact and circumstances of the case, we have filed the above suit against defendants for relief of declaration and permanent injunction and partition and separate possession of in respect of suit

schedule property and plaintiff No.2 competent to swear contents of this affidavit and also the averments made in our plaint is read as part and parcel of this affidavit. The IA filed by the defendants are not maintainable one either in law nor facts hence said IA is kindly be dismiss in limine.

Further, plaintiff No.2 has before farming the issues this Hon'ble court was please to consider plaint averment and contention taken by the defendants in their written statement, thereafter this Hon'ble Court was please to frame the issues. After faming the issues plaintiff No.2 had examined as a PW.1 and filed my examination in chief by way of affidavit and marked documents in our favor there after the defendant partly cross examine to me and case was posted for further cross examination. After the trial has commenced the defendant filed the IA for sought the amendment the their written statement, hence, the said IA is not maintainable one, such being the case the said IA is bad in law.

Wherefore, plaintiff No.2 respectfully prayed that, this Hon'ble Court may kindly be pleased to dismiss the application with costs in the above case in the interest of justice.

5. The following points that arise for my consideration are as hereunder:

1. Whether the defendant No.1 has made out the grounds for allowing the application at this stage ?

2. Whether the defendant No.1 has made out that, if application is not allowed she will be put into great loss or hardship?

3. What order?

6. Heard arguments. Perused the materials on record.

7. Perused the entire materials available on record. My answers to the above points are as hereunder:

Point No.1: In the affirmative,

Point No.2: In the affirmative,

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

REASONS

8. **Point No.1 and 2:** Since these 2 points are interrelated to each other to avoid the repetition, have taken together for my consideration. This suit

filed by the plaintiffs against the defendants for seeking the relief of partition and separate possession and permanent injunction regarding the suit schedule property, at the pendency of the suit defendant No.1 filed this present application for amend the written statement as sought in the application.

9. In order to prove these point defendant No.1 has given the reasons in his annexed sworn affidavit and support of the same his counsel has argued that the said proposed amendment regarding the amendment the written statement as mentioned in the application's schedule. For this proposed amendment, she has given the reasons as stated in the annexed affidavit that, at the time of filing of this written statement due to over sight could not give very important information pertaining to the execution of registered gift deed by the plaintiff No.1 in favour of the plaintiff No.2 with respect to two agricultural lands. Hence, this vital information is could not mentioned in the written statement. Now I came to know this said information the said information is very necessary to for taken the defence in the above case and also the proper adjudication and with the relief of metes and bounds in this case. Further, this suit is filed by the plaintiffs for seeking

the relief of partition and separate possession in the suit schedule property. Accordingly, the plaintiffs and defendants have necessary the relief by metes and bounds. Such circumstances, defendant No.1 has to be pleaded and taken the proper defence for the effective adjudication of the case. Hence, in view of the above defendant no.1 has right to amend the written statement for the proper adjudication and also the purpose of fair trial. Further, the said proposed amendment is necessary to determined the case and also the purposes of complete and effective adjudication, if the proposed amendment is allowed there is no change the cause of action and also the nature of the plaintiff's suit. Further, if allowed the proposed amendment application there is no prejudice to the other side. Such circumstances, court can be considered the said proposed amendment application in the interest of justice and equity, at the belated stage also.

10. Further, the present case is posted for cross of PW.1. At this stage also court can be considered the such application and also the delay, if the proposed amendment is come up with valid reasons and the said amendment is necessary to decide the case with completely and effective manner and if amendment application is allowed there is no

caused injury or hardship to the other side, that time it can be allowed in the interest of justice. It's also clearly lay down in the Hon'ble Apex Court in the various reported judgment in which;

When the delay can't be granted to refuse the amendment. For the purpose of determined the real question between the both parties, if amendment is necessary court can be considered the same. It is also held in; **(2007) 1 SCC 765 State Bank of Hyderabad v/s TMC.**

Thus, as lay down by the above said Hon'ble Apex Court Decision, it clear that if the proposed amendment is necessary to determined the case and it is not change the nature of the suit and also the cause of action. Such circumstances, court can be considered the such application. Present case on hand, the said proposed amendment in the written statement is necessary to determined the question which is involved between the both parties. Further, if not allowed the said proposed amendment application, defendant No.1 will be caused to injury and also it is caused to the multiplicity of the proceedings. Further, if the said proposed application is allowed there is no caused to injury or hardship to the plaintiffs. Therefore, in view of the above

observation, and also for the purpose fair trial, I am of the opinion that defendant's application is deserved to be allowed with cost. Hence, I answer to the point No.1 and 2 in the **affirmative**.

11. **POINT No.3**: For the findings arrived at Point No.1 and 2, I proceed to pass the following;

ORDER

I.A. No.III, U/o VI Rule 17 of CPC
filed by the defendant No.1 is hereby
allowed with cost of Rs.1,000/-.

For amendment and amendment
written statement.

(Dictated to the Stenographer directly on computer, after transcription, corrected, signed and then pronounced by me in the open Court this the **13th day of January 2022**)

(Thimmaiah G.)
CIVIL JUDGE & JMFC
JAGALURU

(Order pronounced in the open court vide separate Order)

ORDER

I.A. No.III, U/o VI Rule 17 of CPC filed by the defendant No.1 is hereby allowed with cost of Rs.1,000/-.

For amendment and amendment written statement.

Civil Judge and JMFC.

**Anathula Sudhakar V/s P. Buchi
Reddy (Dead) by Lrs & others**

. 14. But what if the property is a vacant site, which is not physically possession, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the courts should not decide the issue of title in a

suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

17. (a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.