

**IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Chinnannavar R. S.
I Addl. Senior Civil Judge, Hubballi.

O.S. No.233/2003

Dated this the 8th day of December - 2021

Plaintiffs : J.G. Tenginkai and others.

.Vs.

Defendants : J.K. Benakatti and others.

PARTIES TO IA No.20

Applicant : Ashok S/o. Krishnappa Benakatti.

.Vs.

Opponents : Jayaprakash G. Tenginkai, Hubballi.

ORDER ON IA No.20

I.A. No.20 is filed by defendant No.2 U/o.6 Rule 17 of CPC seeking amendment of written statement. By way of amendment defendant No.2 intends to delete some lines in para No.13 of written statement and intends to add some lines in its place. In para No.13 of the written statement he has stated that the sale deed in favour of defendants No.10 to 12 is proper and correct and now he intends to delete said admissions and intends to add that the said sale deed are not genuine and bonafide sale deeds and now he intends to

deny the execution of GPA in favour of C.V. Rattihalli, Advocate.

2. In support of application, the defendant No.2 sworn affidavit stating that due to misconception of the facts, which were suppressed by his brother defendant No.1, there was an admission in written statement about the execution of the sale deeds and GPA. Now he intends to withdraw the said admissions. So, he prayed to amend the written statement as sought.

3. The plaintiff filed objection to this I.A. by denying the grounds urged by the defendant No.2 for amendment. It is contended that amendment application is filed after lapse of 18 years and hence, it requires to be dismissed.

4. Defendant No.13 filed objection to said I.A. by contending that defendant No.2 has executed registered GPA dated 21.10.1997 in favour of C.V. Rattihalli, Advocate along with other defendants and hence, now they cannot deny said GPA. The defendant No.13 also contended that the proposed amendment is barred by law of limitation. So, prayed to reject the application with costs.

5. I have heard the learned counsel for the plaintiff and defendants. Perused the application and objection. The following points arise for my consideration:

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?
2. If so, whether the defendant No.2 made out a case that in spite of due diligence, he could not amend the written statement before commencement of trial?
3. What order?

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

Point No.1 : In the Negative.

Point No.2 : In the Negative.

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

REASONS

7. **Points No.1 and 2:** In para No.13 of the written statement it is pleaded by defendant No.1 as under:

“The sale deeds are genuine and bonafide. The plaintiffs are aware of the same at any rate the sale being effected by registered document. The plaintiffs are deemed to have notice of the same.”

In para No.14 it is pleaded as under:

“There is no fraud”

8. So, in written statement defendant No.2 contended that the sale deed executed by them in favour of other defendants are genuine and bonafide documents and

now by way of amendment he intends to withdraw the said admissions. The reasons stated by him is that due to misconception of the facts, his brother suppressed the real facts. But this reason is not at all sufficient to allow him to withdraw the admissions given by way of written statement. The written statement was filed on 16.12.2003 and proposed amendment application was filed on 19.11.2021 i.e. after lapse of 18 years. So, the proposed amendment is barred under proviso of Order 6 Rule 17 of CPC. The defendant No.1 has not shown any cause that in spite of his due diligence he could not amend the written statement prior to commencement of trial. The trial was commenced on 18.03.2010 and hence, the proposed amendment after 10 years of commencement of trial cannot be allowed. On this point I rely upon the judgment passed by Hon'ble Apex Court, reported in **(2009) 2 SCC 409, between Vidya Bai and others -vs- Padmalatha and another**, at para No.19 by considering proviso of Order 6 Rule 17 of CPC held as under:

“It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of CPC restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The courts

jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of plaint.”

9. So, by applying this ruling and because of embargo created on exercise of jurisdiction, I hold that the defendant No.2 has not at all made out prima facie case to amend the written statement and withdraw the earlier admissions. Accordingly, I answer points No.1 and 2 in **Negative**.

10. **Point No.3**: In view of my answer to points No.1 and 2 as stated above, I proceed to pass the following;

ORDER

I.A. No.20 filed by the applicant/ defendant No.2 U/o.6 Rule 17 r/w. Section 151 of CPC is rejected.

Costs shall follow the event.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **8th day of December - 2021**)

**(Chinnannavar R. S.)
I Addl. Senior Civil Judge,
Hubballi.**