

**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.17

Applicants : J.G. Tenginkai and others.

.Vs.

Opponent : J.K. Benakatti and others.

ORDER ON IA No.17

I.A. No.17 is filed by the plaintiffs U/o.6 Rule 17 of CPC with a prayer to add para No.21(a), 29(aa) and 29(dd) in the plaint.

2. In support of application, plaintiff No.4 sworn affidavit by stating that defendants No.1 to 9 illegally sold suit properties to defendants No.10 to 13 and two sale deeds are challenged by them and two more sale deeds are not challenged, as they were not aware about the same and now they intends to add additional pleadings to that effect and

additional prayer in the plaint about challenge to said sale deeds. It is also contended that the suit was stayed by Hon'ble High Court for long time and hence, they could not file this amendment application within the period of limitation. It is also prayed that if the proposed amendment is allowed, the nature of the suit will not change and the defendants will not be put to any hardship. The alternate relief of refund of earnest money was not claimed and now they are claiming the same by way of amendment. With above grounds and the detail grounds urged in affidavit, plaintiffs prayed to allow amendment application as sought.

3. The defendants No.2 to 5 filed objection to said amendment application by denying contents of the affidavit sworn by the plaintiff. It is contended that the proposed amendment changes the nature of the suit and it is contended that plaintiffs can file separate suit with same cause of action. It is also contended that in plaint the earnest money is shown as ₹80,000/- and now plaintiff is seeking refund of ₹10,000/- by way of alternate relief and hence, the proposed amendment shall not be allowed. It is also contended that only in order to drag on the suit, this application is filed. So, they prayed to dismiss the application with costs.

4. Defendant No.13 filed objection to the proposed amendment. It is contended that the proposed amendment is sought after lapse of 16 years and hence, it is not

maintainable. It is also contended that the proposed amendment is barred by law of limitation and hence, it shall not be allowed. It is also contended that when the suit was filed, the plaintiff was aware about these two sale deeds, now could not be challenge the same and they intentionally not challenged it while filing the suit. So, she prayed to reject the application.

5. I have heard the learned counsel for the plaintiffs and defendants. The learned counsel for the plaintiffs relied the following citations:

- 1) 2016 (1) KCCR 73**
- 2) 2018 (4) KCCR 3151**
- 3) 2019 (4) KCCR 3313**
- 4) 2018 (4) KCCR 3148**
- 5) 2019 (2) KCCR 1632**

6. Perused the application and objections. 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 plaintiffs made out a case that in spite of due diligence, they could not amend the plaint before commencement of trial?
3. What order?

7. 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

8. **Points No.1 and 2:** Order 6 Rule 17 of CPC is amended with effect from 01.07.2002. This suit is filed during 2003 i.e. after amendment of CPC. Order 6 Rule 17 of CPC is material to decide the application filed by the plaintiff, which is as under:

“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 questions in controversy between the 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.”

9. So, the court can allow amendment at any stage of the proceedings if the proposed amendment is necessary

for the purpose of determining the real questions in controversy between the parties. The proviso is added stating that the amendment after commencement of trial shall not be allowed, unless the party shows that in spite of due diligence, they could not raise the matter before commencement of the trial. So, keeping in mind this settled proposition of law, now the court has to consider whether the proposed amendment is necessary to determine the real questions involved in the suit.

10. By way of proposed amendment the plaintiff is intending to challenge two more sale deeds, they have already challenged two sale deeds and now they intends to challenge two more sale deeds with respect to suit property. Suit is for specific performance of the contract. Plaintiffs are claiming their rights over the suit property on the basis of agreements of sale, dated 12.02.1993. The alleged sale deeds are dated 21.7.2000. The defendants-owners contended that the said agreements are security deeds towards hand loan of ₹80,000/- and not real agreement of sale. The real dispute involved is to decide whether the plaintiffs are entitle for specific performance of contract or not and the challenge of sale deeds in favour of defendants No.10 to 12 is not the real question involved in this suit. So, I hold that the proposed amendment is not necessary for the purpose of determining the real questions in controversy between the parties.

11. Apart from this, the plaintiff is not entitled for amendment of the pleadings, as they have sought the proposed amendment after lapse of several years. As per proviso, the amendment shall not be permitted after commencement of the trial/ evidence. In this case issues were framed on 09.03.2010. The plaintiff filed evidence affidavit on 18.03.2010, he was cross-examined at length about 28 paras on 28.07.2010 and 04.08.2010. So, the trial commenced long back. The application for amendment is filed on 28.02.2019 i.e. after dismissal of the suit on I.A. No.14. So, I hold that the plaintiffs have not proved that in spite of due diligence they could not file amendment application before commencement of trial. In the legal notice itself the plaintiff has contended that if there are sale deeds behind their back, they are not binding on them. In reply defendants stated that they have sold the property. So, when the suit was filed, the plaintiffs were aware about these sale deeds. But they did not choose to challenge all the sale deeds, but challenged only two sale deeds and hence, at this stage they cannot be permitted to amend the plaint as sought. The Hon'ble Apex Court in judgment 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.”

12. So, by applying this ruling and because of embargo created on exercise of jurisdiction, I hold that the plaintiffs have not at all made out prima facie case to amend the plaint. If the amendment is allowed, the relief claimed by the plaintiffs about declaration of sale deeds would be specifically barred by time. They are challenging the sale deeds dated 21.07.2000 by filing amendment application on 28.02.2019. Hence, the said relief is barred by law of limitation.

13. I have perused the citations relied by the Advocate for the plaintiffs. Citation No.1- reported in **2016 (1) KCCR 73** is not applicable to the facts of this case, as in said judgment the Hon'ble High Court held that while considering amendment application the court shall not record findings on merits of the case. But question involved

in said decision is not with respect to proviso to Order 6 Rule 17 of CPC. The second citation reported in **2018 (4) KCCR 3151** is also not applicable, as in said case the amendment was allowed before commencement of the trial. The third citation reported in **2019 (4) KCCR 3313** is not applicable because the amendment sought in said case was with respect to change of measurement of the suit property only. The fourth citation reported in **2018 (4) KCCR 3148** and **2019 (2) KCCR 1632** are also not application because in both these citations the proviso to Order 6 Rule 17 was not involved. Hence, none of the citations are relied by the plaintiffs are helpful to them to allow their applications. Hence, I answer points No.1 and 2 in **Negative**.

14. **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.17 filed by the applicants/ plaintiffs
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.

IA No.17 and 20 are rejected, vide separate order and in open court. Case is posted for its original stage i.e. cross of PW.1 by defendants No.10 to 12 and 13.

I ASCJ, Hubballi.