

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &  
J.M.F.C., HUBBALLI

Present:  
Sri. RAGHAVENDRA.R.  
B.A.L, L.L.B.  
I Additional Senior Civil Judge and JMFC.,  
Hubballi.

**O.S. No.331/2023**

Dated this the 15<sup>th</sup> day of January, 2025

Plaintiff : Shri. Ramnath S/o Gurunathasa Jituri.

.Vs.

Defendant : Shri. Laxman S/o Gurunathasa Jituri  
and others.

**PARTIES TO I.A. NO.X**

Applicant/s : Shri. Ramnath S/o Gurunathasa Jituri.

.Vs.

Opponent/s : Shri. Vishnu S/o Gurunathasa Jituri and  
others.

- i. Provision under which : Under Order VI Rule 17 of CPC.  
application is filed
- ii. Relief sought for : For amendment of plaint.
- iii. The date on which : 25.06.2024  
application is filed
- iv. Number of the : X  
application

v. The date on which : D.2, 4 to 6 dt:26.09.2024  
objections are filed  
by different  
opponents

vi. The date on which : 15.01.2025  
orders were passed  
on the said  
application

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### **ORDERS ON IA No.X**

**This order arises out of interlocutory application filed by the applicant/plaintiff under Order VI Rule 17 of Civil Procedure Code for amendment of plaint.**

2. The brief facts of the affidavit annexed to application is that, the defendant No.3 has taken contention that the proposed suit properties are also joint family properties acquired out of the joint family nucleus. The plaintiff and defendants are having equal share. It is submitted that, existence of those properties was not within the knowledge of the plaintiff and the plaintiff came to know about the same after filling of written statement along with counter claim by the defendant No.3. Hence, the plaintiff prayed to allow the application.

3. The defendant No.2, 4 to 6 have resisted the applications by filing objections by contending that, the application is illegal, improper and the same is not tenable either in law or on facts of the case. The application is an after thought, after filing the written statement by these defendants. The plaintiff has not approached to the Court

with clean hand and mind. Neither the plaintiff nor the other defendants are having any share in the said property. The plaintiff knowing very well all these circumstances and factual aspect keeping Silent for all these years, now in order to harass the innocent defendants and to cause delay in disposal of the suit. Hence, prayed to dismiss the application with costs.

4. The defendant No.3 has not objected the application by filing counter to application.

5. I have heard the counsel for the parties and perused the materials on record. The following points are for my consideration.

- **Point No.1:** Whether the plaintiff has made out sufficient grounds to allow the application?
- **Point No.2:** What order?

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

- Point No.1: In the affirmative.
- Point No.2: As per final order, for the following;

### **REASONS**

7. **Point No.1:** It is undisputed fact that, the present suit for partition and separate possession. It is averred in the affidavit annexed to application that, the plaintiff came to know that one of the properties mentioned in the application only on filling of the written statement. The main contention of the defendants that despite of knowing

all these things the plaintiff has not included the all properties. It is worth to note that, the plaintiff has filed the interim application when the case was set down for evidence.

8. The proviso to Order VI Rule 17 of the Civil Procedure Code virtually prevents an application for amendment of pleadings from being 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 the trial. That the burden to prove due diligence is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. That though amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bonafide or malafide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money. The Hon'ble Supreme Court of India has held in a decision reported in <sup>1</sup>(2005) 6 SCC 344 has noted the object of Rule 17 in Para 26 which is to the following effect:

“26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been

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<sup>1</sup> Salem Advocate Bar Association, T.N. Vs. Union of India,

restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

9. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.” Although Order VI Rule 17 permits amendment in the pleadings “at any stage of the proceedings”, but a limitation has been engrafted by means of Proviso to the fact that no application for amendment shall be allowed after the trial is commenced. Reserving the Court’s jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the

parties could not have raised the matter before the commencement of trial. In a suit when trial commences? Order XVIII of the C.P.C. deal with "Hearing of the Suit and Examination of Witnesses". Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues. Order XV deals with "Disposal of the Suit at the first hearing", when it appears that the parties are not in issue of any question of law or a fact. After issues are framed and case is fixed for hearing and the party having right to begin is to produce his evidence, the trial of suit commences. The Hon'ble Supreme Court has held in a decision reported in <sup>2</sup>**(2009) 2 SCC 409** held that "filing of an affidavit in lieu of examination-in-chief of the witnesses amounts to commencement of proceedings."

10. The Hon'ble Apex Court in <sup>3</sup>**(2015) 4 SCC 182**, it has held as under:

**"As noted herein earlier, 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 VI Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on**

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<sup>2</sup> Vidyabai & Ors. Vs. Padmalatha & Anr.,

<sup>3</sup> SUNENDER KUMAR SHARMA VS. MAKHAN SINGH

**the Court to allow amendment of 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 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 laches in making the application for amendment cannot be a ground to refuse the amendment."**

11. The Hon'ble Apex Court in the case of PANKAJA & ANR. VS. YELLAPPA (DEAD BY LRS.) & ORS., reported in MANU/SC/0590/2004 : (2004) 6 SCC 415, wherein it is held that "if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed."

12. The Hon'ble Supreme Court of India has lays down Principles for Amendment of Pleadings in a decision reported in <sup>4</sup>2022 SCC OnLine SC 1128, decided on 01.09.2022]

"Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

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<sup>4</sup> [Life Insurance Corporation of India v. Sanjiv Builders Pvt Ltd

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

- (iii) the prayer for amendment is *malafide*, or
- (iv) by the amendment, the other side loses a valid defence.
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the

plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, 2022 SCC OnLine Del 1897)”

13. On care perusal of the materials on record, it is appears to the Court that, in spite of due diligence, amendment could not have been sought earlier. If the application is not considered, it would lead multiplicity of proceedings between the parties and also caused great hardship which cannot be compensated. The proposed amendment is necessary to effectively adjudicate on the

main issues in controversy between the parties. The proposed amendment does not introduce any new case compared to what has originally been pleaded in the plaint. Further more, the plaintiff ought to have prove the proposed amendment facts by adducing cogent evidence. As such I have not found any grounds to reject the application filed by the plaintiff. Hence, I answer **point No.1 in the affirmative.**

14. **Point No.2:** I proceed to pass the following;

**ORDER**

IA No.X filed by the plaintiff Under Order VI rule 17 of Civil Procedure Code is hereby allowed with cost of Rs.200/-.

The plaintiff is permitted to carry out the amendment as prayed in the application.

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the **15<sup>th</sup> day of January, 2025**)

(Raghavendra. R)  
I Addl. Senior Civil Judge and JMFC.,  
Hubballi.