

ORDER ON IA NO.6

When the case was posted for hearing on preliminary issue, the has filed the present application Under Order VI Rule 17 of CPC seeking amendment to the para No.3 & 11 of the plaint to insert additional facts.

2) The application is accompanied by the affidavit of the Applicant/plaintiff contending that, she has filed the present suit for partition and separate possession and without her knowledge and consent, defendants No. 1, 3 & 4 colluding with each other have partitioned in the suit property and created a false partition deed. The said document is not binding upon her share. This fact was not brought on record to her counsel at the time of filling this suit. Hence, she has filed the present application to insert the fact that, the alleged partition deed does not bind upon her rights and share over the suit property. It is further contended that, the proposed amendment is necessary for the proper adjudication and if the application is not allowed, the very purpose of this application will be frustrated. On the basis of these contentions, the applicant prayed for allowing the application.

3) Per contra, the defendant No.1 has filed objection to the application contending that, the present application is neither sustainable in law nor on facts and the application not filed under proper provision of law. It is further contended that, the proposed amendment is after thought and beyond the scope of this suit and no supportive documents produced in respect of proposed amendment. It is further contended that, the issues are already framed and the case is posted for evidence. As such the proposed amendment would not sustainable in the eye of law and no cogent reason are made out in the affidavit. It is further contended that, if the application is allowed, the plaintiff will be put to grate hardship which cannot be compensate in terms of money. Hence, on these grounds contended that, the present application is not sustainable in the eye of law and prayed for dismissal of the application.

4) The Counsel for both side failed to address their arguments. Perused the materials on record.

5) The following points that would arise for consideration of this court are as hereunder;

- 1.** Whether the amendment as sought in IA No.6 is necessary for the determination of the real question in controversy.?

2. Whether the applicant is due diligent in filing the present application at this stage.?
3. Can proposed amendment be allowed without injustice to the other side.?
4. What Order?

6) My findings on the above Points are as hereunder:

Point No.1 to 3 ; In the Affirmative.

Point No.4 ; As per the final order for the following;

REASONS

7) Point No.1 to 3:-

Since points No.1 to 3 are inter-connected; hence in order to avoid the repetition of discussion, the above said points are taken together for common discussion.

7.1) At the very outset it becomes incumbent upon this court to clarify that, the present suit is filed against the defendants for the relief of partition and separate possession. On perusal of the records it appears that, the defendants have filed their written statement, issues were framed and plaintiff was examined as PW1. Thereafter, the case was poster for hearing on preliminary issue and at that stage, the present application is filed seeking the

amendment to bring the aforesaid facts. It is true that, the applicant has filed this application after lapse of some times from the date of filling of written statement and after framing of issues and commencement of trial. But, PW1 is yet to be subjected for her cross examination and the defendants are having every opportunities to cross examine or to lead their evidence with regard to proposed amendment. Further, at this stage, this court cannot hold mini trial to conclude whether the proposed amendment is true or not and the same can be ascertained by full pledged trial and no conclusion can be drawn by the court at this stage about the contention of the plaintiff regarding limitation or relevancy to the case of plaintiff.

7.3) It would be apposite to observe here that there can be no doubt that the Courts should adopt a liberal approach in allowing such amendments of pleadings, which may be necessary for a just and effective adjudication of the dispute between the parties. This Court is also conscious that, the Courts cannot be expected to turn a blind eye and rather must stay alive to any prejudice or injustice, which could be caused to the opposite party while deciding an application for amendment of pleadings.

7.4) It would be relevant to reproduce Order 6 Rule 17 CPC, which is 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 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.”

A bare reading of proviso to Order 6 Rule 17 makes it abundantly clear that once the trial has commenced, amendment of pleadings should not be allowed unless and until the parties seeking such amendment is able to show that despite exercise of due diligence, the proposed amendment could not have been brought forth earlier or before the commencement of the trial.

7.5) Admittedly, the proposed amendment sought by the plaintiff does not alter the cause of action nor nature of suit. Though the amendment should be made before commencement of trial or settlement of issues, if the court satisfied that the party could not have raised the matter before the commencement of the trial despite due diligence such applications needs to be allowed. It is also well settled principle that, a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. Though the general principle that the amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of the claim, it has no counter part in the principles relating to amendment of written statement.

7.6) In this context the Hon'ble Apex Court in the case of **Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]**, held as under;

"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply

only to a case of the plaint being amended so as to introduce a new cause of action."

Further, reiterating the same principle the Hon'ble Apex Court in the case of **Usha Balashaheb Swamy and others Vs. Kiran Appaso Swamy and others - 2007 AIR SC 1633**, held as under;

"Since we have already held that in the case of amendment of a written statement, the defendant is entitled to take new defence and also to plead inconsistent stand and in view of our discussions made herein above that by making the application for amendment of the written statement, admission was not at all withdrawn by the appellants nor a totally inconsistent plea was taken by the appellants in their application for amendment of the written statement, the High Court had failed to appreciate that by the proposed amendment, the appellants were not withdrawing their admission in respect of the half share in the ancestral property rather they only added that the plaintiff and defendant nos. 3 to 8 could be entitled to such share if they proved to be the legitimate children of Appasao (since deceased) who was entitled to half share in the property of late Veersangayya. That apart, it appears from the record that the written statement filed by the appellants was before the death of defendant no.1 (first wife of Appasao). After the death of defendant no.1, when plaintiff and defendant nos. 2 to 8 claimed themselves as heirs and legal representatives of defendant No.1, the appellants sought amendment of the written statement challenging the legitimacy of plaintiff and defendant nos. 2 to 8. In view of the discussions made herein above, we do not think that it was impermissible in law for the appellants to seek

amendment of the written statement in the manner it was sought for.”

7.7) Further, it is also a very well settled law that, inconsistent pleas can be raised by defendants in the written statement and since the suit is for declaration and mandatory injunction and evidence yet to be commenced, no prejudice would cause to the plaintiff. As already discussed in the judgment of **Usha Balashaheb Swamy** (Supra) the courts are inclined to be more liberal in allowing amendment of the written statement than plaint. Further, by way of the proposed amendment, the nature of this suit will not be changed and by allowing the present application at this stage, the parties would not be subjected to any prejudice especially the plaintiff will not be put to any hardship and parties would be at liberty to set up their case and defense according to the present position in the dispute. It would also be important to note that by allowing the application, the nature of the suit would not change. Accordingly, I proceed to answer the points No.1 to 3 in the **Affirmative.**

8) Point No.4- For the reasons stated above and considering the nature and circumstances of the case in hand. I proceed to pass the following

ORDER

The I.A. No.6 filed by the Applicant/plaintiff under Order VI Rule 17 of CPC is hereby allowed.

Consequently the applicant is permitted to carryout the amendment of plaint as sought for in the application within 14 days from the date of this order.

The applicant shall file the amended plaint as per order VI Rule 15 of CPC (Karnataka amendment).

Sd/-

(Adithyakumar H.R)
Prl. C.J. & I Addl. JMFC.,
Ranebennur.

ORDER ON PRELIMINARY ISSUE

The plaintiff has filed the suit for partition, separate possession and other consequential reliefs. Upon due service of suit summons the defendants appeared before the court through their counsel and filed his written statement.

2. In pursuance to which this court framed issues of which Addl. Issue No.1 reads thus;

“Whether the defendants No.1 & 2 proves that, the suit of the plaintiff is not

properly valued and the court fee paid by the plaintiff is insufficient.?

and posted the matter for hearing on this issue, by treating the same as preliminary issue.

3. However the Hon'ble High Court of Karnataka (FB) in Venkatesh R Desai Vs. Smt. Pushpa Hosmani-(**2019**) **1 KANT LJ 259**, wherein it is held that, if the Court finds that the question of valuation and/or court fees as raised by the defendant relates to the jurisdiction of the Court, it may try such an issue first and before the evidence is recorded on the merits of the claim; and in other eventualities, the Court may examine such a question of valuation and/or court fees, but not necessarily as a preliminary issue or before the evidence on other issues.

4. Wherefore it is amply clear that not in all cases the issue of court fee and valuation need to be treated as preliminary issue and only where the decision on court fee or valuation would assist the court in determining whether the court has pecuniary jurisdiction, the said issues have to be treated as preliminary issues. In view of the same, the following order is passed.

ORDER

“Addl. Issue No.1 being mixed questions of law and fact, the same will be considered along with other issues.

Hence parties are directed to lead their respective evidence on main suit on all issues.”

Call on carryout for amendment and furnishing of amended plaint as per order passed on IA No. 6 by: 24.07.2025.

Sd/-

Prl. C.J. & I Addl. JMFC,
Ranebennur.