

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 288/2015
Dated this 24th day of July, 2023

PLAINTIFF: Akkamahadevi @ Akkamma W/o Suresh
Shirahatti, Age : 43 years, Occ : Household work,
R/o : Ankad kana, Bankapur, Tq : Shiggaon,
Dist : Haveri.

Vs

DEFENDANTS: Basavaraj S/o Shivappa Kundur,
Age : 54 years, Occ : Agriculture,
R/o : Nayikerur, Tq : Savanur,
Dist : Haveri and others.

IA No.X

Applicants: Akkamahadevi @ Akkamma W/o Suresh
(Plaintiff) Shirahatti

Vs

Opponent: Basavaraj S/o Shivappa Kundur,
(Defendant) and others.

ORDER ON IA NO.X

The plaintiff has filed this application U/O 6 Rule 17 of CPC for seeking permission to carry out the amendment in the plaint.

2. The plaintiff Smt. Akkamahadevi W/o Suresh Shirahatti has sworn in an affidavit accompanying to the Ia No.10, wherein, she stated that she had not contended in the plaint with regard to the decree passed in OS No.34/1985 dated : 28.01.1986 by oversight and she had no knowledge about the said previous suit or decree. Therefore, she had not taken any contention in this regard. Therefore, recently her counsel intimated to her to avoid technical objections it is necessary to amend the plaint. Otherwise she unable to prove her case. If carry out the amendment nature of the suit will not change. It is only addition of new facts. There is no intentional delay. Therefore to avoid the multiplicity of proceedings she prayed to allow the application.

3. The defendants filed objection by contending that application is not maintainable at this stage. Already trial was completed matter was posted for arguments and both side advocates canvassed

their arguments when it was posted for reply the plaintiff come up with this application. By virtue of the proposed amendment the plaintiff wants to introduce new facts. In respect of OS No.34/1985. The plaintiff had knowledge about the same in respect of the suit properties, already suit was filed between the same parties and compromised. Therefore, the principles of res-judicata is applicable. Suit is hit by principles of res-judicata. The plaintiff filed this application to drag the matter. Hence, the defendants prayed to reject the application.

4. Heard both the sides and perused the materials on record.
5. The following points arise for my consideration:

POINTS

- 1) **Whether the proposed amendment is necessary for determine the real controversy between the parties?**
 - 2) **Whether the plaintiff explained the due diligence to file this application?**
 - 3) **What order ?**
6. My answers to the above points are as follows:

Point No.1 & 2 : In the Affirmative.

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

:- REASONS :-

7. Point No.1 :- The plaintiff has filed this application when it was posted for final reply arguments of plaintiff.

8. The plaintiff filed this suit for partition and separate possession stating that herself and defendants are the members of joint family and suit properties are the joint family properties. No partition took place between plaintiff and defendants, when the plaintiff requested the defendants to allot her share the defendants refused to effect the partition. Hence, plaintiff filed this suit.

9. Per contra, the defendants have denied the entire plaintiff averments and contended that already the mother of plaintiff filed suit for partition in OS No.34/1985 on the file of Munsif Court Savanur against the defendant No.1 who was arrayed as defendant No.2 in the said suit and the father of present defendant No.1 was defendant No.1 in the said suit. The said suit was ended in

compromise on 28/01/1986. Therefore, the present suit is not maintainable.

10. On the basis of the pleadings my learned predecessor's predecessor framed 10 issues. Thereafter, both side evidence was completed. During the arguments when the defendant counsel addressed in this regard the plaintiff counsel adjourned the matter for reply arguments, then filed this application.

11. On perusal of the provision Under Order.6 Rule 17 it is clear that the party can amend his pleadings at any stage of the proceeding, however the provisions to the order 6 Rule 17 which says “ After commencement of trial 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”. Now the case on hand is in the stage of final arguments and proposed amendment has been sought through present IA No.10 after completion of trial. Therefore, it is necessary to explain due diligence why she could not have raised the matter before the commencement of trial.

12. In the affidavit the present plaintiff clearly stated that her advocate not intimated about the same. Therefore, very recently her advocate intimated and then immediately filed this application. The plaintiff wants to contend that the order or decree passed in OS No.34/1985 is not binding to her share and it is null and void.

13. The learned defendants advocate vehemently argued that in this regard they have asked questions in the cross-examination but PW.1 deposed she does not know. Even she know about the decree after immediately filing of written statement, they have not amended the plaint. Therefore, they sought for reject the application.

14. No doubt the plaintiff filed this application during the stage of finale arguments. But only on that reason the application cannot be rejected. The plaintiff clearly stated that after filing of written statement her advocate not intimated in this regard. It is the duty of the advocate to intimate about the amendment of the pleadings. Therefore, it is the mistake of her advocate. The defendants counsel argued that it is hit by res-judicata. It is relevant to note here that

Whether the principles of res-judicata is applicable or not, is the matter of appreciation of evidence and documents in the judgment. At this stage it cannot be decided. On careful perusal of the documents the mother of plaintiff was party to the suit OS No.34/1985. This plaintiff was minor. The mother of plaintiff represented the present plaintiff. In the said suit either parties have not taken permission to proceed the case through guardian. Before compromise in the said suit the plaintiffs mother was not taken permission of the court as per the provision under order 32 of CPC. In the said partition no share was allotted to the plaintiff separately. Therefore, decree was not passed on the said suit not acted upon. Therefore it is only paper order even decree was also not drawn as per compromise. Therefore, the question arises whether the said order can be held as decree. Whether the aid suit OS No.34/1985 was decreed or not, is to be decided in the judgment only. The plaintiff clearly stated that her advocate not intimated in this regard. Therefore on the mistake of advocate the party could not suffered. The proposed amendment is required to determine the real controversy between the parties.

15. In this regard the plaintiff relied on the decision of Hon'ble Supreme Court in Varun Pahwa Vs. Renu Chaudhary reported in 2019 AIR (Civil) 482, the Hon'ble Supreme Court of India held as under,

Civil Procedure Code, 1908, Or.6 rule 17-
Provisions of -Scope and ambit of-The rules of
Procedure are handmaid of justice and cannot
defeat the substantive rights of the parties-It is
well-settled that amendment in the pleadings
cannot be refused merely because of some
mistake, negligence, inadvertence or even
infraction of the Rules of procedure-The Court
always gives leave to amend the pleadings even
if a party is negligent or careless as the power to
grant amendment of the pleadings is intended to
serve the ends of justice and is not governed by
any such narrow or technical limitations.

8. The plaint is not properly drafted in as much
as in the memo of parties, the plaintiff is

described as Varun Pahwa through Director of Siddarth Garments Pvt. Ltd. though it should have been Siddarth Garments Pvt. Ltd. Through its Director Varun Pahwa. Thus, it is a case of mistake of the counsel, may be on account of lack of understanding as to how a Private Limited Company is to sue in a suit for recovery of the amount advanced.

9. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of

Procedure. The court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings intend to serve the ends of justice and it not governed by any such narrow or technical limitations.

In view of the above decision it clears that the amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. To meet the ends of justice the court can allow the amendment of pleadings even if the party is negligent or careless as to power to grant the amendment of pleadings. In the present suit also the plaintiff has shown careless to file application as early as possible after filing of written statement. If only on the ground reject the application it will causes injustice to the plaintiff. If allow the application and the proposed amendment will not changes the nature of the suit. And it is not new fact. It arises only after the filing of written statement. Based on the contention of written

statement. Therefore, the application can be allowed. Therefore this court has answered the **point No.1 and 2 in the Affirmative.**

16. Point No.3 :- In view of the above discussion, I proceed to pass the following;

ORDER

The I.A. No.10 filed U/o 6 Rule 17 of CPC filed by plaintiff is hereby allowed with cost of Rs.500/-.

Plaintiff has permitted to carry out the amendment as per proposed amendment, as per rule 18 of CPC.

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 24th day of July 2023)

CJ & JMFC., Savanur.

