

KAKB210000952015



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,
KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI
B.com. LLB., (Spl)
SENIOR CIVIL JUDGE, ALAND.

O.S.No.16/2015

DATED THIS THE 02nd DAY OF APRIL 2024

Plaintiff: Shivalingappa S/o Shivanna
Kalshetty,

V/s

Defendants: Dattatraya S/o Shivanna Kalshetty
& others,

PARTIES TO THE INTERIM APPLICATION

**Applicant/
Defendant-1** Dattatraya S/o Shivanna Kalshetty,
Age: 54 Years, Occ: Agriculture,
R/o Madiyal, Tq. Aland,
Dist. Kalaburagi.



(By Sri. B.A. Deshpande, Advocate)

Vs.

**Opponent/
Plaintiff**

Shivalingappa S/o Shivanna Kalshetty,
Age: 51 Years, Occ: Agriculture &
Govt. Servant, R/o Village Madiyal,
Tq. Aland, Dist. Kalaburagi and also
C/o Shivalaya Lalit,
H.No.1-1-949/22/3/6 & 15,
Behind Sankeshwar Kalyan Mantap,
Jewargi Road, Kalaburagi.

(By Sri. P.N. Shah, Advocate)

**ORDER ON INTERIM APPLICATION FILED BY THE
DEFENDANT NO.1 U/O VI RULE 17 OF CPC.**

This is an application filed by the defendant No.1 U/O., VI Rue 17 of CPC, to amend the written statement by allowing the application in the interest of justice and equity

2. In the affidavit annexed to the application, it is stated that the plaintiff has filed the suit for partition and separate possession against him and other defendants



and they files their written statement. At the time of preparation of his evidence, he came to know some mistake crept in the written statement due to oversight and typographically and after came to know the above mistake, immediately without any further delay, he filed the present application to amend the written statement. It is further averred that the contention of the plaintiff that the suit land bearing Sy.No.337/2 is ancestral property, but it is specifically denied the same and therefore, in order to prove his contention and his valuable rights involved in the said matter of the suit property and therefore, the proposed amendment is necessary for adjudication of the matter. If the proposed amendment is allowed, no loss or hardship will be caused to the plaintiff. Otherwise, he will be put to great and irreparable loss. Hence, sought for allow the appplication.



3. On the other hand, the counsel for the plaintiff filed detailed objection contending that the application filed by the defendant No.1 is not maintainable in the eye of law. It is further contended that when the advocate is changed by the defendant No.1 and new advocate filed the petition for amendment without thinking of the consequences and the facts involved. The application filed at fag end when the matter was posted for cross of PW-1. It is further contended that the suit filed in the year 2015 and thereafter, immediately the written statement was filed and the evidence of the plaintiff is completed and now, the evidence of PW-1 is all most all over. At this stage, the application has been filed by the defendant No.1 which is not maintainable.

4. It is further contended that DW-1 admitted that all the questions and pleadings of the parties and



also admitted that the suit properties are ancestral properties and everyone is entitled for share in accordance with law in the suit properties. Now, the defendants wants to take away the admission made by the DW-1 in his cross-examination and only for that purpose and the mischievous scheme behind this is to come out of the admission in the cross-examination made by DW-1. The purpose of amendment cannot be to come out of the admissions and wipe them out. The defendants slept about 8 years over the matter and now conveniently, they come up with new plea and after though plea to negate the existing admissions. The proposed amendment will not decide the controversy between the parties and the defendant No.1 in order to protract the proceedings and to waste and spoil the precious time of this court, filed this false application in



order to harass the innocent plaintiff. On these grounds, prayed for dismissal of the application with costs.

5. Heard arguments on both side.

6. On the basis of application and objection, the

following points arise for my consideration:-

1) *Whether the defendant No.1 has made out sufficient grounds to allow his application?*

2) *What order?*

7. My answers to the above points are as follows:-

Point No.1 : In the negative.

Point No.2 : As per final order
for the following:

REASONS

8. **Point No. 1:** It is pertinent to note that the plaintiff has filed this suit against the defendants for



partition and separate possession with respect to the suit schedule property.

9. When the matter was posted for further cross of PW-1, the present application has been filed to amend the written statement of defendant No.1. On meticulously perusal of the application, objection and documents produced by the both parties, it is admitted fact that the defendant No.1 has filed this application after commencement of trial that to when the case is posted for further cross-examination of PW-1. It is further admitted that the counsel for the plaintiff already cross-examined the DW-1 in detail and he has admitted some relevant facts, which are against his written statement. Moreover, the defendant No.1 with respect to the proposed amendment, no documents has been produced by him to show that Sy.No.337/2 i.e.,



item No.11 of the suit property purchased by Siddanna S/o Chandrasha Kalshetty by his earnings in his favour and the father of defendant No.1 has not invested any amount to purchase the same.

10. It is also relevant to note that the defendant No.5 who examined as DW-2 in his examination-in-chief, at Para No.2 has deposed that Sy.No.337/2 measuring 07 Acres 22 Guntas is not ancestral properties and same has been purchased by his brother Dattatraya S/o Shivanna by his own earnings and it is his self acquired property. So, the version of DW-1 and 2 are contrary to each other. When they have not produced any cogent and relevant documents to show that the item No.11 property bearing land Sy.No.337/2 measuring 07 Acres 22 Guntas is purchased by the defendant No.1 by his own earnings or as per the say of



defendant No.1 in his proposed amendment, the said property is purchased by his elder father by name Siddanna S/o Chandrasha Kalshetty by his own earnings and it is not ancestral properties and his father has not invested any amount for purchase of the said property. So, the plea taken by the defendant No.1 and 5 are all-together different and contrary to each other. Moreover, DW-1 himself admitted in his cross-examination that,

"ದಾವಾ A ಶೆಡ್ಯೂಲ್ ನಲ್ಲಿ ತೋರಿಸಿದ ಎಲ್ಲ ಸ್ವತ್ತುಗಳು
ಪಿತ್ರಾರ್ಜಿತ ಆಸ್ತಿಗಳು ಎಂದರ ಸರಿ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು
ಕೆಲವೊಂದು ಆಸ್ತಿಗಳನ್ನು ಬಿಟ್ಟಿರುತ್ತಾರೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ."

11. So, the DW-1 himself admitted in his cross-examination, then admitted fact cannot be deleted by filing amendment application. Hence, the contention taken by the defendant No.1 cannot be accepted and



even, the present suit has been filed in the year 2015 and thereafter, the defendants have filed their written statement on 09-11-2015, and from the day of filing of the written statement, till the date, they are not vigilant about the court proceedings and also they have not shown any due diligent. At this juncture, I would like to rely upon a **reportable judgment passed by the Hon'ble Supreme Court of India, in Civil Appeal No.2886/2012, in a case of Basavaraj V/s Indira and Others, dated 29-02-2024**, wherein his lordship has held that,

Proviso to Order VI Rule 17 CPC Provides 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. In the case in hand, this is not even the pleaded case of respondents No.1 and 2 before the Trial Court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of the respondents No.1 and 2/plaintiffs. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to be seen at the time for amendment of pleadings. Any right



accrued to the opposite party cannot be taken away on account of delay in filing the application. Held by Hon'ble Supreme Court of India.

12. Another decision reported in **(2019) 4 SCC 332 in between M.Revanna V/s Anjanamma dead by legal representatives and others**, his lordship has clearly held that

Civil procedure code, 1908- Or. 6 R.17 proviso- Amendment of pleadings after commencement of trial- Not permissible except under conditions stated in proviso- Burden on person seeking amendment after commencement of trial to show "due diligence" on his part as contemplated under proviso- Bona fides of prayer for amendment as also prejudice to the other side should be taken into consideration- Neither can amendment be claimed as a matter of right nor has court



absolute discretion to allow amendment in view of proviso- Belated application for amendment, which if allowed, would result in travesty of justice liable to be rejected.

13. On perusal of the above cited decision, his lordship has clearly held that we are considered opinion that the application for amendment of the plaint is not only belated, but also not bonafide and if allowed, would change the nature and character of the suit. If the application for amendment is allowed the same would lead to a travesty of justice, inasmuch as the court would be allowing plaintiff to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the plaint at this stage would cause serious prejudice to plaintiff.



14. Another decision reported **in HCR 2023 Karnataka 348, Karnataka High Court, Kalaburagi Bench, in a case of Kamarunnisa V/s Mehiboobali & others**, wherein his lordship has held that,

A. Civil Procedure Code, 1908 – Order 6, Rule 17 – Amendment of plaint – Partition suit – Application for amendment of pleading shall not be allowed after trial has commenced – In case Court is of opinion that amendment can be granted, it should be satisfied that party seeking amendment was not able to plead facts sought to be introduced by way of amendment before commencement of trial in spite of being diligent – Proposed amendments are in nature of commenting findings given by the Trial Court in its Judgment – This kind of amendment cannot be permitted.



15. On perusal of the above cited decisions, their lordship have clearly held that the application for amendment of pleading should not be allowed after trial has commenced. In the instant case also, admittedly, the plaintiff has filed the suit for partition and separate possession during the year 2015 and after appearance of defendants, they have filed their written statement in the month of November. At the time of filing of their written statement, the defendant No.1 has not sought for proposed amendment in the earlier written statement and therefore, the defendant No.1 has not shown any due diligence on his part as contemplated under proviso and even, the bonafides of prayer for amendment also prejudice to the other side should be taken into consideration and belated application for amendment, which if allowed would result in travesty of justice liable



to be rejected. As, I have already held that in support of proposed amendment application, the defendant has not produced any cogent and relevant documents before this court and therefore, the defendant NO.1 has not made any sufficient grounds to allow his application. Hence, the ratio of above decisions is squarely applicable to the present case in hand. Therefore, in the light of above discussion and reasons assigned by me, the defendant No.1 has not made out any sufficient grounds to allow his amendment application. Accordingly, I answer **point No.1 in the Negative.**

16. **Point No.2:-** For the above said reasons, I proceed to pass the following;

ORDER

Interim Application filed by the
defendant No.1 U/O., 6 Rule 17 of



CPC, dated 09-06-2023, is hereby
rejected with costs.

Further cross of PW-1 on Ex.P-37
and P-38 documents,

Call on:

(Dictated to the Stenographer, transcribed by her,
then corrected by me and pronounced in the open
court on this the 2nd day of April, 2024)

(S.M. ARUTAGI)
Senior Civil Judge,
Aland.

Visit ecourts.gov.in for updates or download mobile app
"eCourts Services" from Android or iOS