

KAKB210003132022



**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.104/2022

DATED THIS THE 06th DAY OF JUNE 2024

Plaintiff: Shailaja D/o Hanmanthraya W/o
Mallikarjun,

V/s

Defendants: Hanmanthraya S/o Gundappa
Kumbar,

PARTIES TO IA

Applicant Shivaraya S/o Gundappa Kumbar
Defendant No.2 Age: 65 Years, Occ: Agriculture,
R/o Hipparga Bag, Tq: Basava
Kalyan, Dist: Bidar.



(D-1 By Sri. T.B Karbari, Advocate)

(D-2 By Sri. S.C Shirwalkar/R.J Patil,
Advocate)

Vs.

**Opponents/
Plaintiff**

Shailaja D/o Hanamanthraya
W/o Mallikarjun, Age: 22 Years,
Occ: Household, R/o Jeratagi,
Tq: Jewargi, Dist: Kalaburagi.

(By Sri.S.K. Barude, Advocate)

ORDER ON APPLICATION FILED BY THE DEFENDANT
No.2 U/O VI RULE 17 OF CPC.

This is an application filed by the defendant No.2 U/O., VI Rule 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 village Hiparagabag and Kudumud of Aland taluk comes under within a limits of Aland taluk and both villages adjacent to each other and he



purchased the suit land bearing Sy.No.18/E measuring 2 acres 13 guntas of land situated in Kudmud village, under registered sale deed from the defendant No.1. Since the date, he was in possession and enjoyment of suit schedule property. The plaintiff has no any right or share or interest over the same and in order to harass him files this false suit and therefore, it is necessary to narrate the facts stated of proposed amendment of application, otherwise it will defective on his part. It is averred that, due to over sight same has not pleaded in the written statement and proposed amendment it will not changed the nature of the suit not withdrawn any admission made in the earlier written statement and it will decide to resolve the controversy between parties to the suit. On these grounds, sought for allow the application.

3. On the other hand, the plaintiff has files detailed objection to the application contending that the



present application is not maintainable under the eye of law and facts. It is further, contended that the sale deed taken place in between defendant No.1and2 is nominal sale deed and same has been alienated by the defendant No.2 in order to grab the share of the defendant No.1 and even, when the defendant No.1 was intoxication condition the same has been obtained. Therefore, the said sale deed is not binding upon her share. The defendant No.2 in order to protract the proceedings of this court, files this false application which cannot be entertained. On these grounds, prayed for dismissal of application with costs.

4. Heard arguments on both side.

5. On the basis of application and objection, the

following points arise for my consideration:-

- 1) *Whether the defendant No.2 have made out sufficient grounds to allow his application?*
- 2) *What order?*



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

Point No.1 : In the affirmative.

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

REASONS

7. **Point No. 1:** It is pertinent to note that the plaintiff has filed this suit for partition and separate possession against the defendants with respect to the suit schedule property.

8. When the matter was posted for defendants evidence, the defendant No.2 come up with the present application to amend the written statement. On meticulously perusal of the application, pleadings as well as objection filed by the plaintiff counsel, it is undisputed fact that when the matter was posted for evidence on defendant, the defendant No.2 come up



with present application to amend the written statement.

9. On perusal of proposed amendment it is clear that the defendant No.2 has taken contention with regard to the alienation of suit property by defendant No.1 and in view amendment of Sec.6 of Hindu Succession Act 2005, the daughters have no right to challenge the alienation and therefore, the proposed amendment will not change the nature of suit and not withdrawn admission made in the earlier written statement and if the same is allowed, no loss or hardships will be caused to the plaintiff. Even, the counsel for plaintiff is liberty to cross-examine the defendant No.2 on contention taken in their objection.

At this juncture, I would like to rely upon a ***decision reported in 2023 (1) KCCR 1 (SC), Supreme Court of India, in a case of Life Insurance Corporation of***



India V/s Sanjeev Builders Private Limited & another, wherein his lordship has held that,

A. CIVIL PROCEDURE CODE 1908 –

Order 6, Rule 17 – Pleadings – Prayer clause – Permitting the plaintiffs to amend the plaint with respect to the prayer clause, the laws on the question of allowing or rejecting a prayer for amendment of the pleadings more particularly – When the plea of limitation is taken by one of the parties.

The Court held that “It is well settled that the Court must be extremely liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no



absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation". Relied on AIR 1957 SC 357: (2004) 3 SCC 392.

B. CIVIL PROCEDURE CODE, 1908 –

Order 6, Rule 17 – Amendment of pleadings – Role of Courts – Principles to be applied – All amendments to be allowed – Amendment shall not cause prejudice to the other side which cannot be compensated by costs – Amendment after statutory period – Discussed and stated ultimately that the amendments should be allowed liberally.



10. Another decision **reported in 2023 AIAR (Civil) 443 Supreme Court of India, In a case Of Ganesh Prasad V/s Rajeshwar Prasad& others**, wherein his lordship has held that,

A. Civil Procedure Code, 1908, Order 6.Rule 17-Amendment of pleadings-The subject matter of the civil suit is a property, a shop-Plaintiff filed suit which was dismissed for non-prosecution-Plaintiff filed another suit under Sec. 83 of the Transfer of Property Act-Plaintiffs filed an application seeking to amend the plaint under Or. VI Rule 17 of CPC- Civil Judge rejected the application-The District Court allowed the revision application and permitted the Plaintiffs to amend the plaint-The High Court declined to interfere with the order passed by the District Court allowed the revision application and



permitted the Plaintiffs to amend the plaint-The High Court declined to interfere with the order passed by the District Court-Challenge-Held, the plaintiffs and Defendants are entitled to amend the plaint, written statement or file an additional written statement-It is, however, subject to an exception that by the proposed amendment, an opposite party should not be subject to injustice and that any admission made in favour of the other party is not but wrong-All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken-Appeal dismissed”



11. On perusal of the above decision, his lordship has clearly held that the principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The Courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that even, the defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken.



12. In the instant case also, though the application has been filed after commencement of trial but, the same was not alter or substitute a new case of action and even the proposed amendment does not cause any injustice or prejudice to the other side. Moreover, as already held that the plaintiff has liberty to cross-examine the above said points and also files their additional statement if any on the above points and also cross-examine the defendant No.2 with regard to proposed amendment. Therefore, the proposed amendment will not change the nature of the suit and does not withdrawn the admission made in the earlier written statement by the defendant No.2 and it will resolve the controversy between the parties to the suit. Hence, the defendant No.2 has made out reasonable grounds to allow their application. Accordingly, **I answer point No.1 in affirmative.**



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

ORDER

Interim Application filed by the defendant No.2 U/O., 6 Rule 17 of CPC, dated 04-04-2024, is hereby allowed on costs of Rs.500/-.

The defendant No.2 is hereby permitted to amend the written statement subject to payment of costs and within stipulated time.

(Dictated to the Stenographer, transcribed by her, then corrected by me and pronounced in the open court on this the 06th day of June, 2024)

Senior Civil Judge,
Aland.

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