

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
PONNAMPET**

-: PRESENT :-

Sri. Mohanagowda M.E., B.A., LL.B.,
Civil Judge & J.M.F.C.,
Ponnampet.p

O.S.No.41/2013

Dated, the 9th day of April 2019.

Plaintiffs:

Machimada M.Bopanna,
S/o: M.M.Madaiah,
Age: 34 years,
R/o: Balliamundur Village & Post,
Srimangala Nad,
Virajpet Taluk, S.Kodagu.

(By **Sri.K.P.Bopanna**, Advocate)

-Vs-

Defendants:

1. Sanju Kumar V.R,
S/o: Late V.V.Raju,
Age: 37 years,
R/o: Opp.Govt.Primary School,
Ponnampet Town & Post,
Virajpet Taluk, S.Kodagu.
2. Ranju Kumar V.R,
S/o: Late V.V.Raju,
Age: 39 years,
R/o: Opp.Govt. Primary School,
Ponnampet Town & Post,
Virajpet Taluk, S.Kodagu.
3. V.S.Ramaiah,
S/o: Late Sannappa,
Age: 70 years,
R/o: Balliamundur Village & Post,

Virajpet Taluk, S.Kodagu.

(Since deceased by LR's)

3(a). Smt.V.R.Kamala,
W/o: Late V.S.Ramaiah,
Age: 70 years,
R/o: Balliamundur Village & Post,
Virajpet Taluk, Kodagu.

3(b). V.R.Mallaiah Gowda @ Manu,
S/o: V.S.Ramaiah,
Age: 35 years,
R/o: Balliamundur Village & Post,
Virajpet Taluk, Kodagu.

3(c). V.R.Ashoka Gowda,
S/o: V.S.Ramaiah,
Age: 33 years,
R/o: Balliamundur Village & Post,
Virajpet Taluk, Kodagu.

(By **Sri.N.G.Kamath, Advocate,**
LR's of D3 Exparte)

ORDER ON I.A XVI

**Applicant/
Defendant No.1:**

Sri.Sanjukumar & Others,

**Opponent/
Plaintiff:**

Sri.Machimada Bopanna,

**ORDER ON I.A.No.XVI FILED BY DEFENDANT NO.1 UNDER
ORDER 6, RULE 17 R/W 151 OF CPC**

This I.A.No.XVI is filed by Defendant No.1 under order 6 rule 17 R/w 151 of CPC to amend the written statement

filed on 28.11.2013 in the above case as stated in the application.

2. The Defendants in their affidavit contended that when they went through their written statement they found the additional Para was left out due to oversight. The reason is unintentional and bonafide one, the proposed amendment is vital and unless the same is incorporated they will not be able to defend their right in the suit schedule property. No prejudice will be caused to the plaintiff if the IA is allowed. On the other hand great hardship and injustice will be caused to them if the IA is not allowed, hence prays to allow the application.

3. The plaintiff filed objection and contended that through the proposed amendment the defendant is trying to fill the lacuna in their case. It is too late to file the I.A, no reasons are given for delay in filing the I.A. The amendment sought is irrelevant and it is not necessary for the purpose of determining the real questions in controversy between the parties. Hence it is prayed to dismiss the IA.

4. Heard learned counsel and perused the materials placed before the court.

5. Now, the points that would arise for my consideration are;

1. Whether the amendment sought is necessary for the purpose of deciding real controversy between the parties?
 2. What order?
6. My finding on the aforesaid points for consideration is:

Point No. 1 : In the Negative.

Point No. 2 : As per final order.

For the following:

REASONS

Point No.1:

7. Only pre-trial amendments are allowed more liberally however the defendant has filed this I.A after completion of evidence of plaintiff and when the case was posted for defendants' evidence.

8. In the present IA the defendants sought to explain some clerical error in original sale deed. According to their pleadings at paragraph (a) of the written statement the defendants derived their title to the suit schedule property from an unregistered sale deed dated 24.1.1982. In that sale deed sold property was shown as Survey No.94 instead of Sy.No.98. Now through this I.A the defendants want to clarify those issues.

9. No doubt this court at this stage can not decide the falsity of the proposed amendment. But the defendants

aren't diligent in their defense. I have carefully perused the entire written statement and they don't even whisper the survey number of the property which they claim to have purchased through "unregistered sale deed". In their written statement they pray this court to "send the unregistered sale deed dated 24.1.1982 to Sub-registrar Office for registering the document as per Karnataka Stamp Act." The defendants haven't filed counter claim with proper pleading, they don't even pay court fee on counter claim, no issues are framed on counter claim but still they have such a prayer. Moreover by this I.A the defendants aren't amending the written statement but they are trying to amend the original unregistered sale deed. Moreover it is an obvious fact that the unregistered sale deed won't help the defendants to establish their title, hence even if the IA is allowed it would not help the defendants.

10. It is to be noted that the suit was filed in the year 2013 and Written statement was also filed in the year 2013 itself, hence it is difficult to believe that the defendant has not read his own written statement for six long years. The defendant isn't diligent and trying to fill up all loop holes in the evidence. The parties are bound to read their pleadings carefully even before presenting them to court. There is long delay in filing the application. In *Ajendraprasadji N. Pandey v. Swami Keshavprakeshdasji N.*, (2006) 12 SCC 1 Hon'ble Apex Court held:

“43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognising the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief.”

11. In the present case the facts pleaded in proposed amendment were within his knowledge at the time of filing of written statement only, it is not some discovery of new fact. Strangely the defendant doesn't give any reason for not pleading the facts in his original written statement he simply states “it was unintentional and bonafide mistake” “by oversight”. Mere use of terms “unintentional” “bonafide” “oversight” doesn't make it so. In the present case the evidence of plaintiff is completed and now case is posted for defendants' evidence. The law mandates the such applications can not be allowed after commencement of trial

i.e after issues. Hence in view of the above judgment of Apex Court this court has no power to allow the present I.A.

12. In Subramanyam v. Kushal Chand ILR 2000 KAR 571 Hon'ble Court held as under:

“3. There is a doctrine of finality which attaches itself to different stages of legal proceedings and the principle also applies to pleadings. It is true that the Courts do make certain exceptions provided there is very valid ground but more importantly provided that the application is made in good time and it doesnot result in manifest injustice. In the present instance, one needs to take note of the fact that the suit has come up to the stage of arguments, that it is six years old and the question is as to whether at this Igite stage an amendment of the written statement should be permitted and the evidence should be reopened. To my mind, such a procedure cannot be permitted for the reason that among other things, it would result in manifest injustice to the opposite party. The contention is that the defendant has not repaid the loan and that this is the reason why the plaintiff had to approach the Court for recovery and it is absolutely essential that the time factor should also be taken into consideration by the legal system. Even after the pleadings are complete and the evidence has started inexceptional cases, a Court may allow an amendment but if that stage is over and the evidence has been closed, by permitting reopening of the evidence, to my mind, it would not only be injustice to the opposite party it would be manifestly unfair to the system itself because it is due to such situations that litigation gets dilated and goes on interminably. It is in this background, that the order of the Trial Court will have to be upheld and no interference is warranted....”

I have perused the above precedent. It is to be noted that the above judgment was delivered before 2002 amendment of the provision and now in view of stringent proviso to

Order 6 Rule 17 this court is literally has no power to allow the amendments liberally without cogent reasons.

13. The case is already 5 years old and evidence of plaintiff is completed. The defendant isn't diligent, after five years of filing the suit he reads his pleadings and says that he hasn't pleaded some material facts. It appears that the defendant is trying to delay the case, hence, I am of the opinion that, the application filed by the defendant deserves to be dismissed. Accordingly, I answer Point No.1 in the **Negative.**

Point No. 2 :-

14. Hon'ble Apex court in Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249 and in Ashok Kumar Mittal Vs. Ram Kumar Gupta (2009) 2 SCC 656 held that it is the bounden duty of the courts to impose the heavy cost to curb vexatious applications. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The present system of levying meagre costs is wholly unsatisfactory and does not act as a deterrent to vexatious or luxury litigation borne out of ego or greed, or resorted to as a 'buying-time' tactic. In view of the above legal dictums it is the bounden

duty of this court to impose heavy cost and not just nominal cost. The present application is filed after five years of filing the written statement and hence it is nothing but abuse of process of court. In view of the above legal dictums and reasoning I proceed to pass the following:

ORDER

I.A.No.XVI filed by the defendant under Order 6 Rule 17 R/W Sec.151 of CPC is hereby dismissed with cost of Rs.1000/-.

The defendant shall pay the cost to the plaintiff on the next date of hearing.

(Typed by me on my computer, after clerical additions by the stenographer, corrected and pronounced by me in the Open Court on this the 9th day of April 2019)

-sd-

(Mohanagowda M.E.,)
Civil Judge and J.M.F.C.
Ponnampet.