

**IN THE COURT OF THE CIVIL JUDGE JMFC,
PONNAMPET.**

**PRESENT : Sri.Shrinath A, B.A.L, L.L.B.,
Civil Judge & JMFC.,
Original Suit No.23/2021**

Dated this the 16th day of December 2025.

- Plaintiffs** :1. Smt.Mery Belzeen,,
W/o: Sri.Soundaram,
Age: 71 years.
2. Sri.John Stanley,
S/o: Soundaram,
Age: 51 years.

Both are residing at
Kembukolly, K.Badaga Village,
Kutta Post, S.Kodagu.

(By Sri.K.V.Sunil, Advocate)

-Vs-

- Defendants:** :1. Sri.Joseph D'Cruz,
S/o: Willy D' Cruz,
Age: 57 years.
2. Smt.Violet D'Cruz,
W/o: Late Willy D 'Cruz,
Age: 71 years.
3. Smt.Mery Thavamani,
W/o: Joseph D'Cruz,
Age: 50 years,



All are residing at
No.11, 2nd floor, 1st House,
3rd Main, 1st cross,
Ayyappa temple block,
Vannarpet, Bangalore
East Range, Bangalore 560 047.

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

PARTIES TO I.A.VI

**PLAINTIFF/
APPLICANT** : Sri.John Stanley,

-V/s.-

**DEFENDANT/
OPPONENT :** Sri.Joseph D'Cruz and Others,

**ORDERS ON I.A.NO.VI FILED BY THE PLAINTIFFS
UNDER ORDER VI RULE 17 OF CPC**

IA No.6 is filed by plaintiff for amendment of plaint praying the court to add the contention of adverse possession in the pleadings and also in the prayer to declare him as absolute owner in respect of suit property.

2. In the affidavit he has stated that by oversight such pleadings was missed out and such amendment will



not lead to any material alteration to the facts and pleadings and such amendment if not held it would cause hardship to the plaintiff and not hardship to the defendants, hence prays to allow the application.

3. The defendants filed objections that such amendment would change the nature of the suit and there is no new cause of action to allow such prayer and at the stage of cross examination of Dw1 sch amendment has been filed where the plaintiff is not due diligent in prosecuting the case and it is only an after thought. It is a abuse of process of law and such application has to be dismissed on laches. It do not determine real question in controversy and hence prays to dismiss the application.

4. Heard advocate for plaintiff and defendant.

5. On perusal, following points are arise for my consideration:-



1. Whether the plaintiffs have made out ground to allow the amendment at the stage of cross examination of Dw1?

2. What Order?

6. My answers to the aforementioned points are as under :

Point No.1 : In the Affirmative,
Point No.2 : As the final order
for the following.

REASONS

7. **POINT NO.1** :- The stage at which this application is filed is when it was posted for cross examination of Dw1. The plaintiffs by way of amendment has taken new contention to claim themselves as owner on plea of adverse possession. The suit originally is for the relief of permanent injunction. Since the trial is in the verge of completion it is necessary to ascertain the actual contention of each parties to ascertain whether such amendment is necessary for adjudication of this suit or not. From perusing the plaint the



plaintiffs content to be in possession from 55 to 60 years in the suit property that stood in the name of defendant no.1 from the time when the father of plaintiff no.2 was in the property. It is said that the said Soundaram and Willy D'Cruz pooled money and purchased the suit property. The defendants are son and wife of Willy D'Cruz. The Soundarma has constructed house in the suit property with the prior knowledge assent and consent of Willy D'Cruz and is living in the suit property.

8. On the other hand the contention of defendants is that Willy D'Cruz is the absolute owner of the suit property having acquired from previous owner Neelamma under sale deed 1960. It is the defendants over in possession having mutated revenue records. It is because the defendants were in Bangalore and the said Soundaram being the elder brother of defendant no.1 who is the wife of Willy D'Cruz,



the said Soundaram was visiting the said property to look after the same in the absence of defendants and therefore the plaintiffs have no right title and possession. These are the present facts in the said suit.

9. The plaintiffs have filed the suit for permanent injunction without declaratory relief claiming as owners. By the written statement the title of the plaintiff including possession has been disputed. Now the question is whether allowing the amendment and permitting the plaintiffs to claim adverse possession is there any bar to allow such amendment. The dispute between the two parties is on the point of ownership and possession. Further with regard to possession plaintiffs have stated that from more than 50 to 60 years they are in possession by the knowledge of defendants they have constructed the house and are living. Since the title has been disputed and for plaintiffs seeking



for the relief of permanent injunction under such circumstance it is necessary to seek for declaration without which such prayer cannot be permitted as there is cloud over the title. It is said that both Soundaram and Willy D'Cruz had purchased the property jointly. However the said sale deed has not been produced by both the parties. Therefore for proper adjudication of the entire suit without living further dispute over the parties it is necessary for the court to adjudicate on the real question controversy that is with regard to ownership.

10. Further in the injunction suit if there is cloud over the title, the plaintiff can seek for the relief of declaration to claim ownership in the decree. Under such circumstance it do not change the nature of the suit as the prayer of permanent injunction will be a consequential relief.



11. With regard to laches on the part of plaintiffs, it can be compensated by way of cost and there is no proper reasons given for not pleading such averments earlier. Since the suit is of the year 2021 and despite of denying the title by the defendants in the written statement leading the contention of adverse possession at this point of trial would cause grave hardship to the defendants and hence by imposing cost of Rs.2,000/- would be justice to the defendants.

12. After the commencement of the trial, amendment are not to be hold when plaintiffs fails to show due diligence. However on the other hand it also states that of such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Since in this case only going by the relief of permanent injunction, there can be no adjudication



over real question of controversy on the ownership of the parties over the suit property and would still be upon for dispute if there is no adjudication of title. Since the plaintiffs is seeking for amendment by adding plea of adverse possession, the plaintiffs is admitting the defendants title over the suit property and therefore, the plaintiffs has to prove whether their possession has been hostile and continuous within the knowledge of the defendants and the the defendants have not objected for permissible years to claim adverse possession. Therefore, only for to answer real question of controversy, this court finds necessary to allow such amendment in order to avoid multiplicity of proceedings and for complete adjudication on all the issues.

13. The defendants still have their right to file additional written statement on the new amendment and



therefore no hardship would be caused except on the laches on the part of plaintiffs.

14. With regard to cause of action the facts that the title of the plaintiffs over suit property has been disputed is itself ground for seeking amendment. There is no bar under limitation to allow such amendment on the plea of adverse possession of being in continuous possession for more than 12 years in the suit property as contended subject to the proof of the same. Hence for the above reasons point no. 1 is answered in the Affirmative.

15. **Point No.2**:- In view of the forgoing observations and discussions, this court proceed to pass the following :-

ORDER

The I. A. No.6 filed by the plaintiffs under Order VI Rule 17 of CPC is hereby allowed on cost of Rs.2000/-.

For amendment of plaint.



(Dictated to the stenographer, transcribed and computerized by him, then corrected, signed and pronounced by me in open court on this the 16th day of December 2025)

- sd -

(Shrinath A)
Civil Judge & JMFC
Ponnampet.