

IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC,
BANGARPET.

PRESENT: - Sri. A.C. DAYANANDMURTHY, B.A., LL.M.
Addl. Civil Judge and JMFC, Bangarpet.

Dated this the 5th day of July, 2017

O.S. 136/2009

Plaintiffs :-

- 1) Smt. Mangamma, 70 years,
W/o Late Dandappa,
- 2) Smt. Menasamma, 48 years,
W/o Muniyappa,
Plaintiff No. 1 and 2 are R/at
Hunasanahalli Village,
Kasaba Hobli, Bangarpet Taluk.
- 3) Smt. Narayanamma,
W/o Narayanappa, 46 years,
R/at Singandahalli,
Kasaba Hobli, Kolar Taluk.
- 4) Smt. Lakshmmamma, 43 years,
W/o Byregowda,
R/at Doddasabbenahalli,
Kasaba Hobli, Malur Taluk.
- 5) Mater Praveen, 22 years,
S/o Krishnappa,
- 6) Master Ananda, 20 years,
S/o Krishnappa,
- 7) Kumari Suda, 18 years,
D/o Krishnappa,

Plaintiff No. 5 to 7 are R/at
Hulibele Village, Bangarpet Taluk.
(By Sri NN Adv.)

-V/s-

- Defendants :-
- 1) Sri. Venkateshappa, 50 years,
S/o Late Dandappa,
 - 2) Sri. Srinivasa, 42 years,
S/o Late Dandappa,
 - 3) Chandrappa, 23 years,
S/o Late Muniyappa,
 - 4) Kumari Lalitha, 21 years,
D/o Late Muniyappa,
 - 5) Kumari Pushpa, 19 years,
D/o Late Muniyappa,
 - 6) Kumari Bhagya, 18 years,
D/o Late Muniyappa,
 - 7) Smt. Akkachamma, 60 years,
W/o K. Muniyappa,
Defendant No. 1 to 7 are
R/at Hunasanahalli Village,
Kasaba Hobli, Bangarpet Taluk.
 - 8) Sri. Chikkamunegowda, 40 years,
S/o Late Doddachinnappa, R/at
Hotel Annapurna and Venkateshwara
Silk worm center Near Bus stand,
Bangarpet Town.
 - 9) Smt. Jameela Khanam, 42 years,
W/o Abdul Jalil Baig,
R/at No. 79, Coronation Road,
Bangarpet Town.
 - 10) Smt. Shahaj Bagum, 45 years,
W/o Nazeer Ahmed,
 - 11) Rahimunnissa @ Baik
W/o Sayed Assifulla,

40 years, R/at No. 3212,
Seshachalam Moudaliar Road,
Bangarpet Town, also R/at
Bricks factory, Tyakal Road,
Bangarpet Town and also
Slippers Shop, Near Bus stand,
Bangarpet Town.

12) Sri. Raghu, 45 years,
S/o Late Venkateshappa,

13) Sri. Babu, 43 years,
Late Venkateshappa,

14) Sri. Girisha, 40 years,
S/o Late Venkateshappa,

Defendant No. 11 to 13 are R/at
Hunasanahalli Village,
Kasaba Hobli, Bangarpet Taluk.

15) Gopalakrishna
S/o Srinivasalu Naidu,
R/at Camping Ground,
Bangarpet Town.
(D1 Sri. GH, D3 to D6, D11, D12 Ex-
parte, D7 Inperson, D8 JP, D9 LNR
D15 RG D2,D6 MN D17 MN advocates)

PARTIES TO THE IA No. V

Applicant : 1) Smt. Mangamma, 70 years,
Plaintiffs W/o Late Dandappa,
2) Smt. Menasamma, 48 years,
W/o Muniyappa,
Plaintiff No. 1 and 2 are R/at
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Kasaba Hobli, Bangarpet Taluk.

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W/o Narayanappa, 46 years,
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S/o Krishnappa,
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S/o Krishnappa,
- 7) Kumari Suda, 18 years,
D/o Krishnappa,

Plaintiff No. 5 to 7 are R/at
Hulibele village, Bangarpet Taluk.

-V/s-

Opponants: 1) Sri. Venkateshappa, 50 years,
Defendants S/o Late Dandappa,

- 2) Sri. Srinivasa, 42 years,
S/o Late Dandappa,
- 3) Chandrappa, 23 years,
S/o Late Muniyappa,
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D/o Late Muniyappa,
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- 10) Smt. Shahaj Bagum, 45 years,
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- 11) Rahimunnissa @ Baik
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40 years, R/at No. 3212,
Seshachalam Moudaliar Road,
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Defendant No. 11 to 13 are
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15) Gopalakrishna
S/o Srinivasalu Naidu,
R/at Camping Ground,
Bangarpet Town.

ORDER ON I.A. No. V

This is an interim application filed by the applicant U/o 6 Rule 17 R/w Sec. 151 of CPC., and prayed for permit her to amend her plaint as per the following proposed amendment,

PROPOSED AMENDMENT

To delete the defendants No. 10 and 11 from the cause title of the case.

To delete the item No. 1 of the suit schedule property.

To delete the relief of d) and e) of the suit schedule property.

To delete defendants No. 11 to 13 in last line of para 2 of the plaint and insert in its place defendants No. 12 to 14.

2) In an annexed affidavit the plaintiffs stated that, he is going to relinquish his claim over the suit item No. 1 in the suit schedule property against the defendant No. 10 and 11. The suit is for partition and separate possession over the suit schedule property for 1/8th share. Now the plaintiffs has filed amendment of the plaint to delete the item No. 1 from the suit schedule property and also he

wants to delete the prayer d) and e). The said amendment is necessary to the plaintiffs in case this application is not allowed, the plaintiffs suit may be dismissed as barred by limitation for item No. 1. Therefore the suit item No. 1 was sold long above. Therefore the plaintiff does not want to claim their share in suit schedule item No. 1. In order to explain the circumstance it is necessary to amend the plaintiffs. Hence they have filed the present application.

3) Per contra, though this court has given several opportunity to the defendants to file objection to this application, the defendants did not file any objection to this application. Hence their side objection has taken as nil. In view of the amended provision of CPC and prayed for rejection of the application.

4) Thereafter, I have heard the arguments advanced by learned counsel for the plaintiff and that of the learned counsel for the defendant.

5) The points that would arise for my consideration are as under:

1. Whether the application filed by the plaintiffs for amendment of plaint U/o

6 Rule 17 CPC deserves to be allowed
for proper adjudication of the suit?

2. What Order?

6) My findings on 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 I have already set out in brief as to what the case of the plaintiffs is and as to what the case of the defendants is. In a nut shell the case of the plaintiffs is that the plaintiffs have filed suit for Partition & Separate Possession in respect of suit schedule properties and thereafter the present application was filed by the plaintiffs for amendment for to delete the defendants No. 10 and 11 from the cause title of the case. To delete the item No. 1 of the suit schedule property. To delete the relief of d) and e) of the suit schedule property. To delete defendants No. 11 to 13 in last line of para 2 of the plaint and insert in its place defendants No. 12 to 14. inserting para 4 of plaint that the plaintiffs does not claim over the suit schedule item No. 1 of the suit schedule property since the same has been sold long ago and it is barred by law of limitation.

8) It is well-settled law that the amendment of pleading is permissible at final stage of the proceedings, if it does not effect the complexion of original proceedings. It is well-settled law to avoid the multiplicity of proceedings the amendment of pleadings can be allowed. The amendment sought by the plaintiff inserting 5(a) and Para No.9 1(a) is only to explained the delay caused in filing suit and action taken by the plaintiff to mitigate the losses. If it is allowed it will not prejudice to the defendant. The amendment is necessary to decide controversy between parties and issues involved in the suit and to do complete justice between the parties. And it is also necessary to allow the amendment to avoid the multiplicity of the suit for which I placed the reliance in the decision in “**AIR 1966 SC 997** in case of **Vallabhai -Vs- Jaswimtall** and also the decision reported in case of **State of M.P.V. Union of India (2011) 12 SCC 268 (AIR 2012 SC 2518)**”- Wherein it was held that, though courts have ample power to allow amendment of plaint but said power should be exercised in interest of justice and for determination of real question in controversy between parties-Either party can alter or amend his pleadings in such manner and on such terms as may be just-However, amendment cannot be claimed as a matter of right and under all circumstances, but the courts

while deciding such prayers should not adopt a hypertechnical approach-Liberal approach should be the general rule, particularly in cases where other side can be compensated with costs-Normally amendments are allowed in pleadings to avoid multiplicity of litigation's-Further held, due diligence, such amendment could not have been sought earlier. "In case of **Sampath Kumar -Vs- Ayyakannue, (2002) 7 SCC 559:AIR SC 3369**-Wherein it was held that the delay of 11 years in filing application for- By itself not a ground for rejecting the application-question of delay should not only be decided by calculating the period from the date of institution of the suit but also by taking into account the stage to which the hearing in the suit has proceeded - Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleading at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those, which are sought to

be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiffs as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment “In case of **Rameshkumar Agarwal -Vs- Rajmala Exports(P)Ltd., (2012) 5 SCC 337 : AIR 2012 SC 1887**-Wherein it was held that the Amendment of pleadings –Object-Application for amendment-When can be allowed-Principles reiterated-court should adopt liberal approach instead of hypertechnical approach, in allowing amendment-Amendment seeking to introduce facts/evidence in support of contention already pleaded, is permissible-While deciding the application for amendment ordinarily the court must not refuse bonafide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be

claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations. In case of **Baldev Singh –Vs- Manohar Singh, (2006) 6 SCC 498 : AIR 2006 SC 2832-** Wherein it was held that, a wide power and unfettered discretion has been conferred on the court to allow amendment of pleadings, in such manner and on such terms as it appears to court to be just and proper. In case of **State of A.P –Vs- Pioneer Builders, (2006) 12 SCC 119 : AIR 2007 SC 113-** Wherein it was held that, though an amendment cannot be claimed as a matter of right under all circumstances, yet the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice-Further held, unless serious injustice or irreparable loss is likely to be caused to the other side, the court should adopt liberal approach and not a hypertechnical approach, particularly in a case where the other side can be compensated with cost-dominant object to allow the amendment in the pleadings liberally is to avoid multiplicity of proceedings. In case of “**Surender Kumar Sharma –Vs- Makhan Singh (2009) 10 SCC 626 –**

Wherein it was held that Amendment of plaint-Related application for amendment-Not liable to be rejected merely on ground of delay if court finds that by allowing application real controversy between the parties may be resolved-court can allow application where opposite party can be compensated by costs or otherwise. Therefore, in the instant case the relief was sought for amendment only to explain the delay in filing suit and action taken by the plaintiff to mitigate the losses. The proposed amendment is necessary to adjudicate the matter in dispute and to do justice between the parties and to avoid the multiplicity of the suit. In view of the facts and circumstance of the case ratio laid down by the Hon'ble Supreme Court of India in the above mentioned judgments I am of the considered opinion that the application filed by the plaintiff for amendment of plaint deserves to be allowed. The plaintiff has shown that in spite of due diligence they could not file the application as early as possible.

9) Now the matter is posted for Evidence if any on the side of the plaintiffs. The defendants have got every right to put forth their defence during course of cross examination. Therefore, the application filed by the plaintiffs are deserves to be allowed subject to payment of cost. Mere the delay in filing application is not a ground to reject the application.

The defendant can be compensated by awarding cost of Rs.500/-. In this back ground, I am of the considered opinion that the application filed by the plaintiff for amendment of plaint is deserved to be allowed. Hence, I answered **Point No.1 in the Affirmative.**

10) **Point No.2:-** In view of my finding on Point No.1, I proceed to pass the following:

ORDER

The application filed by the plaintiffs
U/o 6 Rule 17 R/w Sec. 151 of CPC for
amendment of plaint is hereby allowed.

Subject to payment of cost of Rs.
500/-.

The plaintiffs are directed to carry
out the necessary amendment in the
plaint.

(Dictated to the Typist, transcribed and typed by her, corrected and then
pronounced by me in open court on this 5th day of July, 2017.)

(A.C.DAYANANDMURTHY)
Addl. Civil Judge and JMFC, Bangarpet.

(Order separately typed and pronounced in the open court)

ORDER.

Addl. Civil Judge & JMFC.,
Bangarpet.

