

**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC, BANGARPET**

Present:- A.C. DAYANADMURTHY., B.A., LL.M.,
Prl. Civil Judge & JMFC, Bangarpet.

Dated this the 6th Day of April 2021

O.S. 117/2017

Plaintiff :- Krishnappa
(Reptd.by Sri. N.S.-Adv.)

V/s

Defendants :- Ramakrishna and others
(Reptd. by Sri. J.K.-Adv.)

PARTIES TO IA No. 2

Applicant :- Krishnappa
V/s

Opponents :- Ramakrishna and others

ORDERS ON IA – 2

This is an application filed by the plaintiff U/o
6 rule 17 R/w Sec. 151 of CPC praying this court to

permit the plaintiff to amend the plaint in the above case in the ends of justice.

2) In an annexed affidavit the plaintiff stated that plaintiff is the absolute owner in possession of the suit schedule land and he had filed application seeking injunction and the defendant also filed suit in OS.132/2017 on the file of Addl. Civil Judge, Bangarpet and obtained an ex parte order of injunction and started putting up construction. Thereafter court considered the injunction application IA-1 filed by the plaintiff in the above case on merits and allowed the application. The defendants filed Appeal before the Senior Civil Judge, KGF and said appeal was allowed with certain conditions. The defendants without comply with the said order has illegally put up construction in violation of the court orders and trespassed into the suit schedule land and encroached a portion of suit schedule land measuring 25 x 25 ft. The defendants have also illegally put up building in

the said extent in the said portion of the suit schedule land is now are in illegal occupation of the encroached portion of the suit schedule land. Hence he prayed to allow the application.

3) On the other hand, the defendant no.4 has filed objection by denying the application averments and further contended that the defendant No.4 has constructed house in written statement property not a suit schedule property by obtaining licence from the panchayath in old sy no.36/1 and new sy o.36/3 of Kamasamudram village, The defendant no.4 further submits that the defendant no.4 has been actual possession and enjoyment of the written statement property and this defendant has a constructed building in sy no.36/3 by leaving 35 ft road. Now he is trying to interfere in to the peaceful possession of the defendant property. In this regard the defendant no.4 filed suit against the plaintiff and his son on the file of 2nd Addl. Civil Judge, Bangarpet in OS.132/17. The said court

passed an exparte temporary injunction against them from interfering with the peaceful possession and enjoyment of the defendant no.4 property on 17-7-2017.

4) The defendant no.4 further submits that this Hon'ble court was allowed IA-1 filed by the plaintiff on 14-7-2017, the defendant no.4 prepared appeal said order passed by this court before the Addl. Civil Judge (Sr.Dn), KGF in MA.14/2017 after verifying the documents the appeal court set aside the order passed by this court on 9-8-2017 by allowing the appeal. Again the plaintiff preferred the appeal before the Hon'ble High Court of Karnataka against the orders passed by the Addl. Civil Judge KGF in MA.14/2017, the Hon'ble High Court dismissed the appeal on 31-1-2019 by confirming the orders passed by the Addl. Civil Judge (Sr.Dn) KGF.

5) Further the defendant no.4 submits that the Hon'ble High Court of Karnataka giving by findings that the documents indicated discrepancy in given

in the plaint schedule and said to be there in sy no.44, according to which road is said to be in existence towards the west of sy no.44, it has also shown that the land in sy no.36 is towards west of the road, it clearly show that defendant no.4 has constructed house in sy no.36/3 of his property not plaintiff property. Hence he prayed to dismiss the application.

6) Heard arguments by both side.

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

1. Whether the application filed by the 3rd plaintiff for amendment of plaint U/o 6 Rule 17 R/w Sec. 151 of CPC is deserves to be allowed for proper adjudication of the suit?
2. What Order?

8) My findings to the above points are as follows:

Point No.1 : In the Affirmative

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

REASONS

9) **Point No.1** : I have already set out in brief as what the case of the plaintiff and what objection of the defendant. In a nutshell the case of the plaintiff is that plaintiff is the absolute owner in possession of the suit schedule land and he had filed application seeking injunction and the defendant also filed suit in OS.132/2017 on the file of Addl. Civil Judge, Bangarpet and obtained an exparte order of injunction and started putting up construction. Thereafter court considered the injunction application IA-1 filed by the plaintiff in the above case on merits and allowed the application. The defendants filed Appeal before the Senior Civil Judge, KGF and said appeal was allowed with certain conditions. The defendants without comply with the said order has illegally put up construction in violation of the court orders and

trespassed into the suit schedule land and encroached a portion of suit schedule land measuring 25 x 25 ft. The defendants have also illegally put up building in the said extent in the said portion of the suit schedule land is now are in illegal occupation of the encroached portion of the suit schedule land.

10) On the other hand, the defendant no.4 has filed objection by denying the application averments and further contended that the defendant No.4 has constructed house in written statement property not a suit schedule property by obtaining licence from the panchayath in old sy no.36/1 and new sy o.36/3 of Kamasamudram village, The defendant no.4 further submits that the defendant no.4 has been actual possession and enjoyment of the written statement property and this defendant has a constructed building in sy no.36/3 by leaving 35 ft road. Now he is trying to interfere in to the peaceful possession of the defendant property. In this

regard the defendant no.4 filed suit against the plaintiff and his son on the file of 2nd Addl. Civil Judge, Bangarpet in OS.132/17. The said court passed an exparte temporary injunction against them from interfering with the peaceful possession and enjoyment of the defendant no.4 property on 17-7-2017.

11) The defendant no.4 further submits that this Hon'ble court was allowed IA-1 filed by the plaintiff on 14-7-2017, the defendant no.4 prepared appeal said order passed by this court before the Addl. Civil Judge (Sr.Dn), KGF in MA.14/2017 after verifying the documents the appeal court set aside the order passed by this court on 9-8-2017 by allowing the appeal. Again the plaintiff preferred the appeal before the Hon'ble High Court of Karnataka against the orders passed by the Addl. Civil Judge KGF in MA.14/2017, the Hon'ble High Court dismissed the appeal on 31-1-2019 by confirming

the orders passed by the Addl. Civil Judge (Sr.Dn) KGF.

12) Further the defendant no.4 submits that the Hon'ble High Court of Karnataka giving by findings that the documents indicated discrepancy in given in the plaint schedule and said to be there in sy no.44, according to which road is said to be in existence towards the west of sy no.44, it has also shown that the land in sy no.36 is towards west of the road, it clearly show that defendant no.4 has constructed house in sy no.36/3 of his property not plaintiff property.

13) It is well-settled law that the amendment of pleading is permissible at final stage of the proceedings, if it does not affect 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 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 hypertechinical 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 plaintiff is not prejudiced because he will have full opportunity of meeting the case of the plaintiff. 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 hyper technical 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-Belated 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 correct the typographical mistake. 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 views 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.

14) Now the matter is posted for plaintiff's evidence. The defendants have got every right to put forth their defence during the course of cross examination, after lead further chief of PW-1. Therefore, the application filed by the plaintiffs is deserves to be allowed subject to payment of cost. Mere the delay in filing application is not a ground to reject the application. The plaintiff can be compensated by awarding cost of Rs. 2,000/-. In this back ground, I am of the considered opinion that the application filed by the 3rd plaintiff for amendment of plaint is deserved to be allowed. Hence, I answered **POINT NO.1 IN THE AFFIRMATIVE.**

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

ORDER

The application filed by the plaintiff U/o 6 Rule 17 R/w Sec. 151 of CPC for amendment of plaint is hereby allowed with cost of Rs. 2,000/-.

The plaintiff is hereby directed to carry out the necessary amendment in the plaint.

(Dictated to the steno, directly on computer, typed by her corrected and then pronounced by me in open court on this 6th Day of April 2021).

(A.C.DAYANANDMURTHY)
Prl. CJ and JMFC, Bangarpet.

Orders pronounced in the open court,
vide separate order.

ORDER

The application filed by the plaintiff
U/o 6 Rule 17 R/w Sec. 151 of CPC for

amendment of plaint is hereby allowed with cost of Rs. 2,000/-.

The plaintiff is hereby directed to carry out the necessary amendment in the plaint.

(A.C.DAYANANDMURTHY)
Prl. CJ and JMFC, Bangarpet.

Orders pronounced in the open court,
vide separate order.

ORDER

I.A.No.3 filed by the applicants/proposed Lrs of plaintiff under order 22 rule 2 & 3 read with Section 151 of CPC.,is hereby allowed on cost of Rs.500/-.

The legal heirs of the plaintiffs is hereby permitted to come on record.

(A.C.DAYANANDMURTHY)
Prl. CJ and JMFC, Bangarpet.