

**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 1st day of April, 2019.

O.S. 283/2015

Plaintiff :- Sri. H.D. Venkateshappa,
S/o Late Dasappa, 59 years,
R/o Hulibele Village,
Kasaba Hobli, Bangarpet Taluk.
(By Sri. SK Adv.)

V/s

Defendants:- Sri. Thimmarayappa,
S/o Late Dasappa, 69 years,
R/o Hulibele Village,
Kasaba Hobli, Bangarpet Taluk.
(By Sri. KVS Adv.)

PARTIES TO IA No. 4

Applicant : Sri. Thimmarayappa
(Defendant)

V/s

Opponents : H.D. Venkateshappa
(Plaintiff)

ORDERS ON I.A. No. 4

This is an application filed by the defendant U/o 6 rule 17 of CPC praying this court to permit him to amend the written statement in the above case in the ends of justice and equity.

2) In the annexed affidavit the defendant has stated that, the defendant has not pleaded anything in his previous written statement in respect of 5th item of schedule property. He is unable to trace out through which documents his mother acquired the title and possession over the 5th item property. The said documents have been misplaced in the house at the time of filing of the written statement, he is unable to trace the same, about 2 days back his son was searching some old documents the certified copy of the Registered Sale Deed above referred was traced and handed over the same to him. The delay in filing an application is purely bonafide. If the application is not allowed the defendant will be put to great hardship and injury. On the other hand no

prejudice will be caused to other side. Hence he prays for allow the application.

3) On the other hand, the plaintiff has filed his affidavit by denying the application averments and further stated that the defendant has unnecessarily trying to drag the proceedings. This case has been posted for cross of PW-1, at that time the defendant has filed this application with false affidavit. The defendant has no sufficient ground to seek the said amendment. If the application is allowed the nature of the suit will be changed and it will born out new case and also require much time. The plaintiff has trying to knock off the plaintiffs legitimate share i.e., suit schedule properties. In this case this court already framed issues and plaintiff has already adduced his evidence on the points which were admitted. If the application is allowed the plaintiff will greatly prejudice to the plaintiff and also plea taken in the suit. There is no fresh cause of action justifying the amendment of

the written statement. Hence he prays for reject the application.

4) Heard arguments.

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

POINTS

1. Whether the application filed by the defendant for amendment of written statement U/o 6 Rule 17 of CPC is deserves to be allowed ?

2. What order?

6) 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: -

R E A S O N S

7) **POINT No.1** :- It is pertinent to note that I have already set out in brief as to what the case of the plaintiff and what the case of the defendant. In

a nut shell the application of the defendant is that the defendant has not pleaded anything in his previous written statement in respect of 5th item of schedule property. He is unable to trace out through which documents his mother acquired the title and possession over the 5th item property. The said documents have been misplaced in the house at the time of filing of the written statement, he is unable to trace the same, about 2 days back his son was searching some old documents the certified copy of the Registered Sale Deed above referred was traced and handed over the same to him. The delay in filing an application is purely bonafide. If the application is not allowed, the defendant will be put to great hardship and injury. On the other hand no prejudice will be caused to other side.

8) On the other hand, the plaintiff has filed his affidavit by denying the application averments and further stated that the defendant has unnecessarily trying to drag the proceedings. This case has been posted for cross of DW-1, at that time the

defendant has filed this application with false affidavit. The defendant has no sufficient ground to seek the said amendment. If the application is allowed the nature of the suit will be changed and it will born out new case and also require much time. The plaintiff has trying to knock off the plaintiffs legitimate share i.e., suit schedule properties. In this case this court already framed issues and plaintiff has already adduced his evidence on the points which were admitted. If the application is allowed the plaintiff will greatly prejudice to the plaintiff and also plea taken in the suit. There is no fresh cause of action justifying the amendment of the written statement.

9) 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 sought by the defendants is very necessary to decide the

matter controversy in between the parties. If it is allowed, it will not prejudice to the plaintiff. 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 written statement 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.

10) It is pertinent to note that, 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 written statement of the defendant 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 strait jacket 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 malafide 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.

11) It is pertinent to note that, 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 hyper technical 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 pleading-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 defendant 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 defendant for amendment of written statement deserves to be allowed. The defendant has shown that in spite of due diligence they could not file the application as early as possible.

12) Now the matter is posted for cross examination of PW-1. The plaintiffs have got every right to put forth his plaint facts during course of cross examination. Therefore, the application filed by the defendants 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 plaintiffs 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 defendants for amendment of written statement is deserved to be allowed. Hence, I answered **Point No.1 in the Affirmative.**

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

ORDER

The application filed by the defendant U/o 6 Rule 17 of CPC for amendment of written statement is hereby allowed on cost of Rs. 500/-.

The defendant is directed to carry out the necessary amendment in the written statement.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in open court on this 1st day of April, 2019.)

(A.C. DAYANANDMURTHY)
Prl. C.J. & JMFC, Bangarpet.