

KAKL510008872019



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,

AT K.G.F.

PRESENT: **Sri.VINOD KUMAR.M** BAL.,LLB,LLM.,
I ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

O.S. No.270/2019

DATED THIS THE 20th DAY OF APRIL - 2023

BETWEEN :

K.Shiva Prasad,

S/o late Samba Shiva Murthy Swamiji,

Aged about 43 years,

R/at: No.84, 1st Cross, 2nd "A" Main,

Near Kamakya Theatre Signal,

BSK 3rd Stage,

Bengaluru.

.... Applicant/Defendant No.2

(By **Sri. N.S.**, Advocate.)

V/s

K.V.Kumari,

D/o Venkataswamy,

Aged about 52 years,

Uttharadhikari/Administrator

of Sree Kotilingeshwara Swamy Temple,

Kammasandra Village,

Bethamangala Hobli,

K.G.F. Taluk, Kolar District.

... Opponent/Plaintiff

(By **Sri. M.N.**, Advocate.)

Orders on I.A.No.IV U/o 6 Rule 17 R/w Sec.151 of CPC

At the stage of objections to IA No.II & III, the defendant No.2 filed an I.A.No.IV U/o 6 Rule 17 R/w Sec.151 of CPC for seeking amendment of written statement by way of counter claim U/o 8 Rule 6(a) of CPC in para No.19(a), in the interest of justice.

2. In the accompanied affidavit in support of application, he filed present amendment application to seek counter claim for the relief of declaration of title & delivery possession of written statement schedule property car. After filing of written statement, the ARTO of K.G.F has ordered for registration of RC in his name dated 22-02-2022 and become owner of the Innova Car suit property. But, the plaintiff taking advantage of the car parked at the temple and taken unauthorized custody as claiming that, it is a temple property without right over the said vehicle. In order to multiplicity of proceedings, he sought for counter claim over written statement schedule car. The proposed amendment is necessary to give finality of litigation between parties and necessary. If not permitted to seek amendment he will be put irreparable injury & loss and he will be go to another round of litigation. Hence, he prays to allow the application.

3. Per contra, the plaintiff filed objections by denying the contents of affidavit in support of application inter-alia contending that, the application filed by the defendant No.2 is

not maintainable either in law or facts. It is further that, she filed suit for injunction against defendants in respect of suit schedule car. Earlier to filing of the suit, the defendants & daughter of defendant No.1/Smt.Anuradha have jointly issued notice dated 13-05-2019 stating that, suit schedule car is being used by her and demanded to hand over the vehicle with keys and records. Subsequently, she replied to notice on 10-06-2019 stating that, car is the property of temple and in her custody by paid balance loan amount out of personal money through RTGS and also denied the ownership of defendants. The denial of ownership of title, the defendants should have claim for right over suit schedule car within 3 years from the date of reply. On these ground, the present application for declaration of title by way of counter claim is barred by law of limitation. In the written statement filed by defendants contended that, plaintiff is unauthorized possession of the car. In the meantime, the defendant No.1 lodged a police complaint that, after death of Swamiji the vehicle is missing and illegally detained by her custody. The cause of action for the counter claim starts on 10-06-2019, when she issued legal notice to defendants by denying the right over car through notice. On this ground, she prays to reject the application.

4. Heard the arguments by counsel of defendants & plaintiff and perused the documents available on record.

5. The points that arise for my consideration is that :-

1. Whether the proposed amendment to written statement by way of counter claim is just and necessary to decide the controversy between the parties?

2. What Order?

6. My findings to the above points are:-

Point No.1 : In the **Affirmative**

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

REASONS

7. **Point No.1:-** It is not in dispute that, the plaintiff has filed a suit against defendants for relief of permanent injunction in respect of suit schedule car. When the matter is set down for objections to IA No.II & III at that time the defendant No.2 filed present application sought for amendment to written statement in prayer for declaration of title & delivery of possession over written statement schedule car.

8. The learned counsel for defendant No.2 argued that, the plaintiff claiming the suit schedule car as unauthorized possession. But, the defendant No.2 is being son of Swamiji, who is original owner of Innova Car. After death of Swamiji, the defendant No.2 become owner of Innova Car and got changed RC of the Innova Car from ARTO K.G.F. On these ground, the defendant No.2 claiming the declaration of title over Innova Car and hand over the possession of the said car from plaintiff. It is

further argued that, if any limitation and pecuniary jurisdiction as contended by Plaintiff should be consider on merits, but not at this stage. The amendment sought for counter claim is just & necessary for decide the issue between parties. If not allowed the application, he goes for another round of litigation in respect of counter claim relief. On these ground, the counsel for defendant No.2 prays to allow the application.

9. On other hand, the learned counsel for plaintiff argued that, the defendant No.2 admits the plaintiff is in unauthorized possession of the Innova Car itself enough to show the plaintiff is holding the possession of Innova Car in her custody. Originally Innova Car is property of temple and using for temple activities. The plaintiff has paid a balance loan amount to Innova Car through RTGS. It is further argued that, before filing of the suit the defendants have issued legal notice on plaintiff dated 13-05-2019 stating that, Innova Car is using by plaintiff and demanded to hand over the vehicle with keys and records and replied by plaintiff on 10-06-2019 stating that, she paid balance loan amount to the said car and car is a property of temple and also denied the ownership of car. Hence, the defendants ought to have filed counter claim for declaration of title over Innova Car within 3 years from the date of reply notice dated 10-06-2019. But, the present counter claim filed by defendant No.2 by way of amendment is after lapse of 3 years and barred by law of limitation. The value of the Innova Car is more than 5 lakhs and this court has no pecuniary jurisdiction

to try the declaration of title over Innova Car by way of counter claim filed by defendant No.2. On these ground, the counsel for plaintiff prays to dismissal the application.

10. It is specific contention of defendant No.2 in the affidavit to support of present application that, he filed present amendment application to seek counter claim for the relief of declaration of title & delivery possession of written statement schedule property car. After filing of written statement, the ARTO of K.G.F has ordered for registration of RC in his name dated 22-02-2022 and become owner of the Innova Car suit property. But, the plaintiff taking advantage of the car parked at the temple and taken unauthorized custody as claiming that, it is a temple property without right over the said vehicle. In order to multiplicity of proceedings and other round of litigation, he sought for counter claim over written statement schedule car. On other hand, the plaintiff contended that, defendants filed written statement by admits the unauthorized possession of Innova Car & key itself in the possession of plaintiff. The vehicle is property of temple and paid balance loan amount out of personal funds through RTGS. Before filing of the suit, the defendants & daughter of defendant No.1/Anuradha have issued legal notice to her by demanding to hand over the Innova Car with Key and denied the title/right of the Innova Car in the reply notice on 10-06-2019. Since the date of denying the right over Innova Car, the defendants ought to have file suit for declaration of title by way of counter claim

within 3 years. But, present application filed after lapse of 3 years itself barred by law of limitation.

11. On perusal of both contention goes to show that, the plaintiff filed suit for permanent injunction in respect of Innova Car as holding unauthorized possession. On other hand, defendants filed written statement admits the unauthorized possession of innova car & key in the custody of plaintiff. Now, the defendant No.2 seek amendment to written statement by way of counter claim for declaration of title & hand over the possession of innova car from plaintiff. Here, the plaintiff claims the possession of innova car and also defendant No.2 claims the ownership of said car includes possession of the car from plaintiff. From the relief of plaintiff in the plaint and proposed amendment by way of counter claim in respect of innova car. On these ground, the issue between parties in respect of possession of innova car and ownership of innova car ought to have resolve by this court in the full-fledged trial and necessary issues to be framed on the basis of both contention by the parties. If the contention of both parties regarding innova car is in unauthorized possession of plaintiff, the ownership of the car also has to be decide by the court by way of counter claim sought by defendant No.2.

12. The learned counsel for plaintiff argued that, before filing of the suit, the defendants & daughter of defendant No.1/Smt.Anuradha have issued legal notice dated 13-05-2019 stating that, plaintiff is being used the innova car and

demanding to hand over the said car with key and replied by plaintiff on 10-06-2019 stating that, she paid personal money to discharge the balance car loan through RTGS and car is property of temple includes denial the title/ownership of car. On these ground, the defendant No.2 seek for declaration of title over innova car within 3 years from the date of denial the ownership through reply notice on 10-06-2019. Such being the counter claim filed by the defendant No.2 is barred by law of limitation. In support of contention, the learned counsel for plaintiff has produced legal notice dated 13-05-2019 and reply notice dated 10-06-2019 clearly reveals that, both parties have claiming the innova car and denied the title of the innova car each other. But admittedly, the defendant No.2 seek for counter claim for declaration of title over innova car after lapse of 3 years as contended by plaintiff in the objections as well as arguments. In the present application for amendment of pleadings filed as interim application, but not decide on the main matter until full-fledged trial between parties. It is settled law that, issue in respect of limitation is mixed question of law and decide the limitation issue with subject matter of main matter in the full-fledged trial between the both parties. On these ground, the question of limitation to sought for counter claim by defendant No.2 should be consider with main matter and requires to lead evidence by both sides. Such being, the contention of plaintiff regarding counter claim seek by defendant No.2 cannot be consider until full-fledged trial and contention of plaintiff regarding value of innova car is more

than 5 lakhs as barred by pecuniary jurisdiction of this court also can consider at the time of framing preliminary issue on this point.

13. The learned counsel for defendant No.2 specifically argued that, amendment application for counter claim cannot reject on the ground of limitation and pecuniary jurisdiction. Both contention would be consider on merits, but not at this stage. In support of argument, the learned counsel for defendant No.2 has relied ratio laid down in **H.Aziz Khan dead by Lrs V/s Smt.Muniyamma dead by Lrs.**, reported in 2004(4) KLF 246, wherein Hon'ble High Court of Karnataka held as hereunder:

Amendment cannot to refused on the ground that, relief sought through amendment is time barred. Where plea of limitation is arguable and can itself be made issue after amendment, amendment sought for ought to allowed to avoid multiplicity of suit.

And another ratio laid in **Supreeth K.S. V/s S.Pameela** in WP No.49401/2019 C/W WP No.30526/2019, wherein the Hon'ble High Court of Karnataka held in para No.25 reads as hereunder:

25. The Apex Court in the case of Jag Mohan Chawla and another v. Dera Radha Swami, Satsang and others reported in AIR 1996 SC 2222 has gone to the extent of holding the words "any right or claim in respect of a cause of action accruing with the defendant would show that the cause of action from which counter claim arises need not necessarily arise

from or have any nexus with the cause of action". This position has been followed and reiterated in the case of Cottage Industries Exposition Ltd., v. Smt. Bindu Neelakanta [ILR 2015 KAR 4775]. In light of the same, the relief of mandatory injunction sought for which would be consequent upon dismissal of the suit of the plaintiff cannot be held to be barred.

I have gone through the both ratios laid down by Hon'ble High Court of Karnataka crystal clear that, amendment to pleadings cannot be dismiss on the ground of limitation and said contention has rightly pointed out by learned counsel for plaintiff in the arguments. On these ground, the question of limitation in filing of present application cannot be consider as contended by plaintiff in arguments and objection.

14. It is important to know the proviso of **Order 6 Rule 17 of CPC reads as follows : “amendment pleadings – the court may at any stage of the proceedings either party to alter or amend his pleading in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”.**

By close reading of Order 6 Rule 17 of CPC, this proviso gives discretionary power to the court to decide on the application of pleadings before commencement of the Trial. An institution of the suit is necessary for applying for amendment of pleadings.

15. The learned counsel for plaintiff argued that, amendment to written statement by way of counter claim for the relief of declaration of title cannot be allowed in barred by law of limitation and doctrine of relation back. In support of contention, the learned counsel for plaintiff has relied ratio laid down by Hon'ble Apex Court & Hon'ble High Court of Karnataka in following cases: -

(i) Between Noharlalvarma V/s DCC Bank, Jagadalpura, reported in 2008 (14) SCC 445,

(ii) Between Eshwar Ganapati Kyasti & others V/s Gurulingappa Basheshattappa Kyasti & others, reported in 2006 (6) KLJ 544,

(iii) Between L.C.Hanumanthappa dead by Lrs V/s H.B.Shivakumar, reported in 2015 (4) KCCR SN 429,

(iv) Between Radhika Devi V/s Bhajarangi Singh & others, reported in 1996 (7) SCC 486,

(v) Between Chairman of Institute of Engineering V/s Nagaraj, reported in 2010 (2) KCCR 1194,

(vi) Between N.Kasinath V/s Arun.R Rawell, reported in 2008 (2) KCCR 907,

I have gone through the ratios laid down by Hon'ble Apex Court & High Court of Karnataka are not applicable to present facts and circumstances of the case in my hand.

16. As per Order 6 Rule 17 of CPC in case the amendment to pleadings before commencement of trial, the court has to allow the same for the purpose of determining the real questions in

controversy between the parties. Then only, parties can amend the pleadings at any stage of the proceedings. An institution of the suit is necessary for applying for amendment of pleadings. In support of my view, I am relying decision laid down in ***Gayathri Womens Welfare Association V/s Gowramma & another***, reported in 2011(2) SCC 330, wherein Hon'ble Apex Court held as hereunder:

31. In our opinion, the decision of the trial court is in conformity with the aforesaid principles. The trial court has clearly held that the cause of action for the relief of possession arose to the respondents many years ago. They may, therefore, have a cause of action, if any, for an independent suit. In the aforesaid case, the Court further reiterated the principle in Ganga Bai Vs. Vijay Kumar¹³ wherein it was rightly observed :

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court."

17. I have perused the averments made in the plaint and written statement filed by both parties in this suit. On perusal of suit for permanent injunction filed by plaintiff and seeking for counter claim against plaintiff in respect of same innova car would be decide on pleadings and documents in the full-fledged

trial. As per proviso of **Order 6 Rule 17 of CPC** in case the amendment to pleadings after commencement of trial, the court has to allow the same for the purpose of determining the real questions in controversy between the parties. Then only, parties can amend the pleadings at any stage of the proceedings. In order to give final verdict and to avoid multiplicity of proceedings. It is just and necessary to consider the application filed by plaintiff. Even though the amendment sought for declaration of title would be necessary to resolve the issue between parties. Here, the filing of application for the relief of declaration of title over written statement schedule innova car should be subject to law of limitation. Therefore, the ratio laid down by Hon'ble High Court in **H.Aziz Khan case, Supteeth case** & ratio laid down by Hon'ble Apex Court in **Gayathri Womens Welfare Association** case includes proviso U/o 6 Rule 17 of CPC are clearly applicable to present case in my hand. On these grounds, the objections filed by defendants cannot consider at stage until full fledged trial. If the amendment to pleadings by way of counter claim in respect of same subject matter is not allowed, it should go for another round of litigation and unable to resolve the issue between parties on the same subject matter of the claim. Hence, it is very much necessary to amendment of written statement by proposed amendment in order decide the issue between the parties. Accordingly, I answered to **Point No.1** in the **Affirmative.**

18. Point No.2:- In view of any afore said findings proceed to pass the following:

O R D E R

I.A.No.IV U/o 6 Rule 17 of CPC filed by the defendant No.2 is hereby allowed subject to law of limitation in respect of declaration of title over written statement schedule car.

Consequently, The defendant No.2 shall permit to carry out the amendment within time and to file amended written statement.

No order as to costs.

(Dictated to the Stenographer directly on computer, revised and corrected by me and then pronounced in open court on this the **20th day of April, 2023**)

Sd/-

(VINOD KUMAR.M)

I Addl. C.J.& JMFC.,
K.G.F.