

KAKL510001222021



IN THE COURT OF PRL. CIVIL JUDGE & ADDITIONAL JMFC,

AT K.G.F

DATED THIS THE 7TH DAY OF DECEMBER 2021

: **PRESENT:**

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.

O.S. No.44/2021

PLAINTIFF/s : Smt. Naheeda Anjum D/o Hameed Khan,
W/o D.Khadhar Khan,
Aged about 38 years.,
R/at # 10/61, Narayanaswamy Street,
Kuppam, Chittor District,
Andhra Pradesh.

(Rep. by Sri. **S.A.H.**, Advocate.)

Vs

DEFENDANT/s : 1. The Tahsildar,
KGF Taluk,
Robertsonpet, K.G.F.

2. Sri.Dairy Manju s/o Mune Gowda,
Aged about 45 years.,
Gram Panchayath Ward Member,
R/at New Town, Bethamangala,
K.G.F. Taluk.

3. Sri.Anand s/o Munivenkatappa @ Gajappa,
Aged about 40 years.,
R/at New Town, Bethamangala,
K.G.F. Taluk.

4. Sri.Nova s/o late A.Samuel,
Aged about 42 years.,
R/at New Town, Bethamangala,
K.G.F. Taluk.
5. Sri.Manohar son-in-law of late A Samuel,
Aged about 50 years.,
R/at New Town, Bethamangala,
K.G.F. Taluk.
6. Sri.Stephen s/o not known,
Aged about 50 years.,
R/at New Town, Near Cinema Tent,
Bethamangala Hobli,
K.G.F. Taluk.

(Defendant No.1 Rep. by Sri. **A.G.P**, Advocate.)

(Defendant No.2 to 6 Rep. by Sri. **K.S.R.**, Advocate.)

I.A.No.V

APPLICANT/s : Sri.Nova s/o late A.Samuel,
(Defendant No.4) Aged about 42 years.,
R/at New Town, Bethamangala,
K.G.F. Taluk.

V/s

OPPONENT/s : Smt. Naheeda Anjum D/o Hameed Khan,
(plaintiff) W/o D.Khadhar Khan,
Aged about 38 years.,
R/at # 10/61, Narayanaswamy Street,
Kuppam, Chittor District,
Andhra Pradesh.

* * *

ORDER ON I.A.No.V

The defendant no.4 has filed I.A.No.V under Order 6 Rule 17 read with Section 151 of Civil Procedure Code praying this Court to permit him to amend the schedule of counter claim as proposed.

Proposed amendment :-

To Add

- (A) : Survey No.526,
- (B) : East to West by : 60 feet,
- (C) : North to South by : 90 feet,
- (D) : East by : Water Works Colony road,
- (E) : West by : Bethamangala to Kolar Road,
- (F) : South by : Pipe Line road,

**IN THE SCHEDULE OF THE COUNTER CLAIM OF DEFENDANT NO.4
TO DELETE**

- (A) : Survey No.626,
- (B) : Measuring : East to West 90 feet and North to South 60 feet
- (C) : East by : Colony Road,
- (D) : Road (In the schedule of the counter claim of D4) :

2. Defendant no.4 has filed an affidavit accompanying the said IA averring that, he has filed the detailed written statement by way of counter claim, to the claim of plaintiff and on the last date of hearing there crept in mistake in the schedule of the counter claim and same is a typographical error and hence, the same has to be

rectified by deleting and adding the required facts and if the said application is not allowed, he would suffer hardship and hence pray the Court to allow IA No.V.

3. The plaintiff has filed objection to the said IA No.V inter alia denying the defendant no.4's averments and contends that, the amendment sought by defendant no.4 is unwarranted and uncalled and it is only to fish out the evidence and drag on the proceedings and the said amendment in the schedule of the counter claim is denied. The proposed amendment will change the nature and circumstances of the case and will introduce a new case on hand and amendment on this ground is to be rejected. The legal right has accrued to the plaintiff by lapse of time and by the proposed amendment the valid right accrued to the plaintiff will be deprived and defendant no.4 by way of amendment wants to displace the schedule of the counter claim and give a goodbye to the own pleadings on record. The alleged defence was well within the knowledge of defendant no.4 and same was not filed at the time of written statement and there was no due diligence on him. The present application is only to drag the proceedings. Hence, pray the Court to reject IA No.V.

4. Heard the defendant no.4 and plaintiff counsel and perused the materials on record.

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

1. Whether the defendant no.4 has made out the ground to allow IA No.V ?
2. What order ?

6. On perusal of materials on record and after hearing the arguments canvassed by both the counsels, my findings for the above points are as under:-

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** :- Plaintiff has filed the present suit against the defendants seeking the relief of permanent injunction and the defendant no.4 has filed the present application to permit him to amend the schedule of the counter claim. The amendment sought by the defendant no.4 in counter claim is only of the schedule and the said amendment if allowed, wouldn't change the nature of the case or prejudice the other side. Moreover, mere by allowing the amendment wouldn't lead to the presumption that, the schedule

stated through amendment is correct and it will be the burden of the defendant no.4 to prove the same. Further, the stage of the suit is not belated and it is well established proposition of law that, the amendment of written statement has to be considered liberally than that of plaint. Hence, considering the discussion made above, the point no.1 is answered in Affirmative.

8. POINT NO.2 :- In view of the discussion made above, I proceed to pass the following:-

ORDER

I.A.No.V filed by the defendant no.4
under Order 6 Rule 17 read with Section
151 of Civil Procedure Code is hereby
allowed with cost of Rs.200/-.

(Dictated to the Stenographer, on computer and computerized by him, corrected by me, and then pronounced in the open court on this the 7nd day of November 2021.)

(NASRAT MUKHTAR AHMED KHAN)
PRL. CIVIL JUDGE & ADDL. JMFC., K.G.F.