

KAKL510019752022



**IN THE COURT OF PRL. CIVIL JUDGE & ADDL.
JMFC, AT K.G.F.**

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

OS No.362/2022

DATED THIS THE 13th DAY OF DECEMBER – 2024

BETWEEN :

Smt. Uma,

....Plaintiff

-V/s-

Sri. Ashok & others

....Defendants

IA No.6

Smt. Uma,

D/o late C.Narayana Swamy,
Aged about 45 years,
R/at: # 213, Dr. B.R.Ambedkar Nagar,
II Block, Oorgaum Post,
K.G.F.

**... Applicant/Plaintiff
(By *Sri. NS, Adv.*,)**

V/s

1. Sri. Ashok,

S/o late Govindamma,
Aged about 65 years,

2. Sri. Arumugam,

S/o Ashok,
Aged about 35 years,

3. Sri. Zinda,
S/o Ashok,
Aged about 33 years,

4. Sri. Stephen,
S/o Ashok,
Aged about 30 years,

All are R/at: II Main, 1st Cross,
Dr. B.R.Ambedkar Nagar,
Oorgaum Post,
K.G.F.

... Opponents/Defendants
(By **Sri.GSV. Adv.**)

i.	<i>Provision under which the application is filed</i>	U/o VI Rule 17 of CPC
ii.	<i>Relief sought for</i>	Amendment of Plaintiff
iii.	<i>The date on which the application is filed</i>	13-06-2024
iv.	<i>Number of the application</i>	IA No.6
v.	<i>The date on which the objections are filed by different opponents</i>	16-11-2024
vi.	<i>The date on which the orders were passed on the said application</i>	13-12-2024

ORDERS ON I.A.No.6 U/o 6 RULE 17 R/W Sec.151
OF CPC

At the stage of evidence of Plaintiff, the plaintiff filed an I.A.No.6 U/o 6 Rule 17 R/w Sec.151 of CPC seeking amendment of plaintiff by adding the para No.13(a) and prayer of the plaintiff with “B” Schedule, in the interest of justice.

2. In the accompanied affidavit in support of application contended that, she filed suit for the relief of Permanent Injunction. She is absolute owner in possession of suit property to extent 25 x 25 feet and constructed made to extent North to South 21 feet and left vacant space to extent 4 feet on Northern side. But, the defendants encroached the portion of “B” Schedule property and made illegal construction in the said property. The said construction is illegal in “B” Schedule property without any right and liable to demolish the illegal construction and deliver the possession of the same. In this regard, she seeking for amendment of plaint to necessary to resolve the issue between parties. In order to avoid the multiplicity of proceedings, she seeking for Declaration of Title to “A” Schedule property and Mandatory Injunction in respect of “B” Schedule property. The amendment is just & necessary and proposed amendment will not change the nature of suit and cause of action. If the application is allowed, no hardship to others. Hence, she prays to allow the application.

3. Per contra, the defendants filed objections by denying the contents of affidavit in support of application inter-alia contending that, the application filed by the plaintiff is not maintainable either in law or facts. It is further that, the plaintiff has not explained alleged date & details of construction to extent 4 feet. They are not made any new construction during pendency of suit except constructed long back. The suit for Declaration of Title is barred by limitation for the more than 50 years. The proposed amendment is

changing the nature of suit and cause of action. The relief of plaintiff is not maintainable. On this ground, they pray to dismissal the application with exemplary cost.

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

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

1. Whether the proposed amendment to plaint 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 Injunction in respect of suit schedule property. When the matter is set down for evidence of plaintiff, at that time the plaintiff filed present application sought for amendment to plaint by adding the pleadings and prayer with “B” Schedule in respect of Declaration of Title & Mandatory Injunction and it is just & necessary for amendment in respect of illegal encroachment by defendants. On other hand, the defendants contended that, the plaintiff never explained about date & details of illegal encroachment to extent 4 feet and construction made long

back. The suit of the plaintiff for Declaration of Title is barred by limitation for more than 50 years ago. If the application is allowed, the nature of suit & cause of action would be change.

8. I have perused the averments made in the plaint and written statement filed by both parties in this suit. On perusal of suit for Injunction filed by plaintiff in respect of suit property. But, the plaintiff contended in present application that, during the pendency of suit the defendants illegally made construction in "B" Schedule property by encroached out of part & parcel of "A" Schedule property and seeking relief of Declaration of title to "A" Schedule property as well as Mandatory Injunction in respect of "B" Schedule property. On other hand, the defendants contended that, they never made any illegal construction during the pendency of suit and construction made long back.

9. From the contention of plaintiff that, the defendants have illegally constructed in "B" Schedule property during the pendency of suit. On other hand, the defendants denied the illegal construction and construction made long back and suit for Declaration of Title is barred by limitation. In order to decide the contention of plaintiff & defendants to resolve the issue, it is necessary to permit for amendment in plaint in respect of Declaration of Title & Mandatory Injunction. The proposed amendment is necessary for adjudication of the matter to resolve the issue between both parties in respect of suit property.

10. It is important to know the proviso of **Order 6 Rule 17 of CPC** reads as follows:

Amendment of pleadings

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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:

The Rule 17 inserted in the Amendment of 2002 restricts the power of the court to allow amendments of pleadings at any stage of the proceedings. It says that the court cannot grant permission for amendment after the trial has commenced. However, the court may allow the amendment if it thinks that, even after due diligence, it was not possible for the party to raise the matter before the trial. By close reading of **Order 6 Rule 17 of CPC**, this section gives discretionary power to the court to decide on the application of pleadings even after found due diligence of the trial. An institution of the suit is necessary for applying for amendment of pleadings.

11. 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."

12. The learned counsel for defendants argued that, the amendment application is not maintainable in view of construction made long back and relied ratio in ***Malan Ganapat Gurav V/s Smt.Annapurna Arun Sambrekar***, reported in 2016(1) KCCR 524 held that, ***seeking for amendment after lapse of 7 years cannot permitted.*** In the present case, the plaintiff seeking amendment that, defendants have illegally made construction during the pendency of suit. But other hand, the defendants have denied the same. In order to ascertain the facts, it needs to commence trial after allowing the application to decide the issue between parties in respect of ownership and Mandatory Injunction subject to point of limitation to claim Declaration of Title. Such being, the contention of defendants regarding changing the nature of suit and cause of action cannot be consider. If any other contention of defendants can be consider on the merits in full-fledged trial, but not at this stage. As per proviso of

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 in order to give final verdict and to avoid multiplicity of proceedings. It is just and necessary to consider the application filed by plaintiff regarding amendment of Declaration of Title & Mandatory Injunction in respect of “A” & “B” Schedule property to decide the issue between the parties. Therefore, the ratio laid down by Apex Court in **Gayathri Womens Welfare Association** case and 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 subject to consider the law of limitation to the relief of Declaration of Title. Hence, it is very much necessary to amendment of plaint by proposed amendment in order decide the issue between the parties subject to consider on payment of cost. Accordingly, I answered to **Point No.1** in the **Affirmative**.

13. Point No.2:- In view of any aforesaid findings proceed to pass the following:

ORDER

IA No.6 U/o 6 Rule 17 of CPC filed by the plaintiff is hereby allowed subject to point of limitation for Declaration of Title in respect of "A" Schedule property.

Consequently, the plaintiff shall permit to carry out the amendment within time and to file amended plaint.

No order as to cost.

(Dictated to the Stenographer directly on computer, revised and corrected by me and then pronounced in open court on this the **13th day of December, 2024**)

Sd/-
(VINOD KUMAR.M)
P.C.J., & Addl. JMFC.,
K.G.F.