

IN THE COURT OF 1st Addl. CIVIL JUDGE AND J.M.F.C.,
AT : MALAVALLI, MANDYA.

PRESENT

Smt. KAVYASHREE H.S.
1st Addl. Civil Judge and J.M.F.C. at Malavalli

Dated this the 15th day of June, 2024

Original Suit No.20/2015

Plaintiffs : 1. Gowramma
W/o Late Chowdaiah,
Aged about 60 years,
R/o Gundapura village,
Halaguru Hobli,
Malavalli Taluk.

2. Chikkathayamma
W/o Late Chikkalingegowda,
46 years, R/o Girija Slum,
Mandya Town,
Near Factory Circle, Mandya.

(By Sri. MSS. Advocate)

V/s

Defendants : 1. Ramesh S/o Late Madegowda
2. Raju S/o Late Madegowda
Dead by Lrs.
3. B. Kumara S/o Buthegowda.

(D-1 by Sri. MGT. Advocate)
(D.2 Lrs by Sri. R.P. Advocate)
(D.3 by Sri. J.R. Advocate)

IA No. V

APPLICANT : Gowramma
-V/s-
Opponent : Ramesh and others

ORDERS ON IA No.V

The applicant has filed this application under Order VI, Rule 17 read with Section 151 of the CPC, seeking leave to amend the plaint as requested, in the interest of justice and equity

2. The present application is supported by the sworn affidavit of the plaintiff, wherein she has stated that she has instituted the current suit against the defendants seeking relief by way of a declaration and consequential relief in the form of a permanent injunction. The plaintiff avers that the suit schedule property was gifted to her by Defendants No. 1 and No. 2 via a registered gift deed.

3. During discussions with her counsel about the case, the plaintiff learned that, during cross-examination, Defendant No. 3 admitted to being in possession of the suit property and acknowledged that his possession was illegal. Furthermore, the plaintiff asserts her rightful ownership of the property, having received it as a gift from the defendants. Due to a lack of knowledge, the plaintiff was unable to include the necessary relief in the prayer column at the time of filing the plaint. This omission was not intentional.

4. The plaintiff submits that if this application for amendment is allowed, no injury or loss will be caused to the defendants. Conversely, if the application is denied, the plaintiff will suffer significant hardship and greater injustice.

5. In view of the foregoing, it is respectfully prayed that this Honorable Court to allow the application in the interest of justice.

6. The defendant has filed an objection to this application, denying all the averments made therein. The defendant contends that the plaintiff has not approached the Court with clean hands. Defendant No. 3 has also claimed counter relief in the present suit, for which the requisite court fee has already been paid as per law.

7. Furthermore, the defendant argues that there is a limitation period for seeking a prayer for possession, and the plaintiff has sought this prayer only after the framing of issues. The defendant also asserts that before the property was gifted to the plaintiff, it was sold by the plaintiff's father and others, thereby nullifying the plaintiff's right to claim the property.

8. The defendant contends that the proposed amendment will change the cause of action and the nature of the suit. Therefore, the defendant prays for the dismissal of I.A. No. 5 with heavy costs. In light of the above objections, it is respectfully prayed that this Honorable Court reject the application.

9. Heard both sides and perused the documents on record. Upon careful consideration of the arguments and the

documentary evidence presented by both parties, the following observations and order are made:

10. After thoroughly examining the complete records, including the instant application with affidavit and objections filed by the parties, as well as considering the arguments presented by the learned advocates for both sides, it is noted that the plaintiff has indeed instituted the current suit against the defendants seeking the relief of declaration and permanent injunction.

11. It is important to note that Order 6, Rule 17 of CPC empowers the court to allow either party to alter or amend their pleadings at any stage of the proceedings, as long as it is done in such manner and on such terms that are just. The purpose of such amendments is to ensure that the real questions in controversy between the parties are determined effectively.

12. However, there is a proviso that states no application for amendment shall be allowed after the trial has commenced, unless the court determines that despite due diligence, the matter could not have been raised before the trial began.

13. Upon review of the records, it is evident that the proposed amendment is a result of a mistake due to lack of knowledge. Furthermore, the inclusion of the issue of possession is crucial for adjudication, which can only be decided after a full trial process. This amendment is essential for the effective determination of the real questions in controversy between the parties. Courts

may also consider equitable principles in cases of illegal possession, which could impact the availability or timing of legal remedies. These principles focus on fairness and justice in resolving disputes over possession and occupation of property.

14. Based on the observations made during the cross-examination, Defendant No. 3 has made a stray admission regarding the possession of the respective properties, which is a pivotal issue to be adjudicated during the ongoing trial. The claim for possession forms a critical part of the real questions in controversy between the parties. It is essential to resolve this issue through the trial process to ensure a comprehensive and just determination of the case.

15. Upon perusing the proposed amendment, it is evident that it will not alter the cause of action or the fundamental nature of the suit. Importantly, the proposed amendment does not introduce a new cause of action. Instead, it seeks to clarify and properly plead an issue that is already pertinent to the ongoing proceedings. Therefore, allowing this amendment will not lead to the emergence of a fresh cause of action.

The present application was filed by the plaintiff seeking amendment in the plaint. ***It is crucial to note that the Supreme Court, in various precedents, has emphasized that courts should allow amendments necessary for determining the real questions in controversy.*** This principle is highly relevant to the present case, as both parties

dispute possession of the suit schedule property, and possession can only be legally determined through adjudication.

16. Moreover, it is established that the determination and claim of possession constitute the core controversy between the parties. Therefore, the present application should be considered on its merits. ***It is a well-settled and established principle of law, reinforced by numerous Supreme Court decisions, that if an application demonstrates due diligence and the relief sought does not restructure the essence of the suit, amendments to include such relief should be liberally allowed.***

17. Furthermore, ***it is firmly established in legal precedents that amendment applications are not constrained by the law of limitation.*** Therefore, based on these legal principles and established precedents, the present application has prima facie grounds to be allowed.

18. The facts and circumstances of the case clearly indicate that the present application should be allowed, as denying it would result in unnecessary complications and injustice to the plaintiff, which cannot be remedied by monetary compensation. Upon reviewing the proposed amendment put forth by the plaintiff, it is apparent that the plaintiff was unaware of certain crucial aspects and seeks the amendment in good faith, recognizing its significance for the merit of the case. Importantly,

the proposed amendment does not alter the nature of the suit or the cause of action.

19. Therefore, based on these reasons, the application has presented valid grounds to permit the proposed amendment. The statutory provision itself allows the plaintiff the opportunity to amend pleadings if it is demonstrated that, despite due diligence, the matter could not have been raised before the commencement of trial.

While deciding an application under Order VI, Rule 17 of CPC, several principles should be considered:

- a) An amendment that merely elaborates upon or clarifies the legal position regarding the facts already pleaded is permissible.
- b) The application seeking amendment should not introduce entirely new grounds.
- c) The proposed amendment should not prejudice any rights that have vested in the opposing party.
- d) The order allowing the amendment should not prejudge or decide any substantive question that pertains to the merits of the dispute between the parties.

These principles ensure that amendments serve the purpose of facilitating a fair trial and adjudication of the real issues in controversy, without unfairly prejudicing either party or complicating the proceedings.

20. Based on the averments in the application, submissions of the parties, and the facts and circumstances of the present case, this court finds that the amendment sought by the plaintiff is essential for the fair and proper adjudication of the case and for resolving the actual dispute between the parties. Importantly, the proposed amendment does not introduce any new material that would add to the record unnecessarily.

21. Furthermore, since the application was filed after the commencement of the trial, plaintiff established due diligence in raising the matter earlier. With these considerations in mind and in the interest of justice, I proceed to issue the following order:

:ORDER:

1. The application filed by the plaintiff under Order VI, Rule 17 of the CPC seeking amendment of the pleadings is hereby allowed.
2. The plaintiff is permitted to amend the pleadings as specified in the application.
3. The amended pleadings shall be filed within 29-6-2024.

4. The application (I.A.No.V) filed by the plaintiff under Order VI, Rule 17 read with Section 151 of the CPC is allowed, subject to the payment of costs amounting to Rs. 300/-.

This order signifies that the plaintiff is permitted to amend the pleadings as requested in the application.

(Dictated to the Stenographer through on-line computer, corrected and then pronounced by me in the open Court on this the 15th day of June, 2024)

***I Addl.Civil Judge and J.M.F.C.
Malavalli.***

Order pronounced in the open court

: O R D E R :

1. The application filed by the plaintiff under Order VI, Rule 17 of the CPC seeking amendment of the pleadings is hereby allowed.
2. The plaintiff is permitted to amend the pleadings as specified in the application.
3. The amended pleadings shall be filed within 29-6-2024.
4. The application (I.A.No.V) filed by the plaintiff under Order VI, Rule 17 read with Section 151 of the CPC is allowed, subject to the payment of costs amounting to Rs. 300/-.

This order signifies that the plaintiff is permitted to amend the pleadings as requested in the application.

***I Addl.Civil Judge and J.M.F.C.
Malavalli.***