

**IN THE COURT OF PRL. CIVIL JUDGE AND JMFC.,
AT MALAVALLI, MANDYA.**

Present:

***Smt. Shemida.K, B.A.(Law), L.L.B.,
Prl. Civil Judge and JMFC.,
Malavalli.***

Dated this the 12th day of February, 2021

O.S.No.105/2008

Plaintiff :

1) Smt. Jayamma, dead by her LR's.

1(a) Susheelamma W/o. Nagarajachari,
Aged about 55 years, R/o Gareebi Colony,
Holalu Village, Dudda Hobli, Mandya
Taluk, Mandya District.

1(b) Smt. Rathnamma W/o. Late. C.
Nagaraju, Aged about 52 years, R/o
Dodahaladahalli Village and Post,
Uyyamballi Hobli, Kanakapura Taluk,
Ramanagara District.

1(c) Smt. Channajamma, W/o.
Puttaswamachari, D/o. Late.
Puttaswamachari, Aged about 47 years,
R/o C/o. Padmamma, No.20, 10th Cross,
Sanjeevini Nagara, Near St. Mary School,
Moodalapalya, Bangalore.

2) Sri. Krishnachari, S/o. Late.
Puttaswamachari, Aged about 40 years,
R/o Agasanapura Village, Kasaba Hobli,
Malavalli Taluk.

Now R/o C/o. Ramanna, No.24, 1st Main,
'C' Cross, Byadarayanapura, Mysore Road,
Bangalore-26.

(By Sri.R.P. Adv.,)

V/s

Defendants:

1) Smt. Chikkathayamma W/o. Chikka-rachachari, Aged about 60 years, R/o. Kyathegowdanadoddi Village, Kasaba Hobli, Malavalli Taluk.

2) Smt. Doddathayamma @ Chikkathayamma W/o. Siddachari, Aged about 70 years, R/o C/o. Dr. Basavaraju, Balaji Talkies Theatre, 1st Cross, "Mathru Krupa", Maralu Hola, Channapatna Taluk, Ramanagara District.

3) Smt. Prema W/o. Rachappaji, Aged about 30 years.

3(a) Sri. Gurumurthy S/o. Rachappaji, Aged about 17 years.

3(b) Sri. Guruswamy S/o. Rachappaji, Aged about 15 years.

Defendant No.3(a) and 3(b) are minors and their natural guardian Prema W/o. Rachappaji, Aged about 38 years, i.e., defendant No.3 appointed.

Defendant No.3 to 3(b) are R/o Agasanapura Village, Kasaba Hobli, Malavalli Taluk.

4) Smt. Nagamma W/o. Late. Puttarachachari, Aged about 65 years, R/o.

Agasanapura Village, Kasaba Hobli,
Malavalli Taluk.

(By Sri.H.P.R. Adv.,)

I.A.No.16

Applicant : Smt. Prema (Defendant No.3).

V/s.

Opponent : Smt. Jayamma, Dead by LR's.

ORDERS ON IA No.16

This is an application filed by the learned counsel for the applicant/defendant No.3 under Order 6 Rule 17 r/w Sec.151 of CPC, prays to permit her to amend the written statement as prayed for i.e., para No.9(a) to (d), in the interest of justice and equity.

2. The application is supported with the affidavit of the defendant No.3 wherein she has stated that, the plaintiff has filed this suit against her and other defendants for the relief of partition and separate possession in respect of the suit schedule properties. Further it is stated that the item No.1 is in possession and enjoyment of the defendant No.2 having acquired the same through her husband late. Siddachari which was wrongly mentioned by the plaintiff as Puttaswamachari. Further the said Late. Siddachari had purchased the same from one Rachachari through the

registered Sale Deed dtd:20.05.1955 and he was in possession and enjoyment of the same and the documents were standing in his name. After his death, the defendant No.2 succeeded the same and she is in possession and enjoyment of the property by paying kadayam. It is further submitted that the item No.2 and 5 of the schedule properties stands in the name of Gurumurthy and Guruswamy and she is the guardian to them. Accordingly, she acquired the said item No.2 and 3 of schedule properties through the registered Sale Deed executed by T. Yashodamma and the khata also got changed in her name as per M.R.No.24/1999-20. It is further submitted that the item No.2 and 4 of the schedule properties stands in the name of Puttarachachari S/o. Gurusiddachari who is the husband of defendant No.4. The said Puttarachachari purchased the said properties through the registered Sale Deed dtd:28.09.1964 from one Chikkarachachari and he was in possession and enjoyment of the same to till his death and after his death, the defendant No.4 succeeded the same and she is possession and enjoyment of the said properties.

It is further submitted that due to over sight and non-available of relevant documents well in time, she could not stated all these things in her written statement. Now, the above case is posted for cross-examination of PW.1 after remanded back to this Court by appellat Court. While she discussing the said aspects with her counsel he has

instructed to amend the written statement. Further mentioned that while cleaning the house for the purpose of Shivarathri Festival, she traced out the document and thereafter immediately she handed over the same to her counsel. The amendment sought by her is for bonafide a reason and not an intentional one. The proposed amendment is very much necessary to the case on hand and to decide the actual dispute between the parties and to settle the question involved in the suit in respect of the suit schedule properties. If the proposed amendment carried out it will not alter the nature of suit nor change the cause of action. If the application is not allowed, she will be put to much hardship and injustice. On the other hand, if the application is allowed, no injustice and hardship will be caused to the plaintiffs. Hence, it is prayed to allow the said application.

3. On the other hand, the learned counsel for the plaintiff has filed the objection to this application, wherein it is contended that the said application filed by the defendant No.3 is not at all maintainable either in law or on facts and the same is liable to be dismissed in limine. It is further submitted that, the defendant No.3 is the natural guardian of minor defendant No.3(a) and 3(b) who were now attained majority. Hence, the present application filed through natural guardian is not maintainable. It is further contended that

after the lapse of 12 years, the present amendment application is not maintainable and also it is only malafide intention to fill up the lacuna in the written statement. Further contended that this case already disposed and the Appellate Court remanded the same for fresh disposal at this juncture, the present amendment of the written statement is not maintainable. The allegation made by the present application are created, concocted, fabricated by the defendants for the purpose of grab the suit schedule property if possible. The plaintiff or his father Puttaswamachari or his predecessor was not at all executed any document in favour of anybody in respect of the suit schedule properties. Hence, it is prayed for rejection of the application with heavy costs.

4. Heard the arguments on both the sides and perused the documents on record.

5. Now, the points that arise for my consideration are:

1) Whether the applicants have made out grounds to allow I.A.No.16 at this stage as sought for?

2) What order?

6. My findings on the above points are as under:

Point No.1 - In the Affirmative,

Point No.2 - As per final order,

for the following:

-.REASONS:-

7. **POINT No.1:-** Perused the entire records, instant application with affidavit and objections filed by the parties and also arguments canvassed by the learned advocates for the parties.

8. Admittedly, the plaintiff has filed present suit against the defendant for the relief of Partition and separate possession. This case was decreed in favour of the plaintiff on 19.11.2011. Aggrieved the said order, the defendants have preferred an appeal before the Appellate Court in R.A.No.29/2014 which was allowed on 14.09.2015 wherein the judgment passed by this Court on 19.11.2011 was set aside and remanded the matter to this Court to dispose according to law after giving sufficient opportunity to both the parties. When the matter was stood for further cross of PW.1, the present application came to be filed by the defendants and opposed by the plaintiff.

9. Further it is important thing to note that, **Order 6 Rule 17 of amended CPC** clearly states that, *no application for amendment shall be allowed after the trial has been commenced, unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the*

matter before the commencement of trial. Further as per law the filing of amendment or additional written statement it is open to the defendant to add a new ground of defence or to substitute or alter the defence or even to take inconsistent pleas in the written statement so long as the pleadings do not result in causing grave injuries or irretrievable prejudice to the plaintiff. It is well settled that Court should be more generous in allowing the amendment of written statement, than in case of plaint. Further in the present case, the counsel for the defendants along with the application has furnished several documents which shows the transaction in respect of suit properties. Moreover, in the said R.A.29/2014 the defendants have filed an application along with additional documents and seeking permission to lead the evidence. Hence, the Hon'ble Appellate Court directed this Court to give sufficient opportunity to both the parties.

10. During the time of argument, the counsel for the plaintiff stated that the defendant simply watching the proceedings and not filed the present application intime and there was lapse of 12 years and in this regard, he has furnished a decision reported in **2020(2) Indian Civil Cases 24 (Cal.) (Krishna Pan (Dutta) Vs. Dulal Das), wherein it is held that:-**

“Civil Procedure Code, 1908, Order 6 Rule 17 - Amendment of written statement - Trial of suit commenced - Court's jurisdiction to allow such application is taken away unless condition precedents satisfied - Court must come to conclusion that inspite of due diligence, party could not raise matter before commencement of trial - Application for amendment does not offer any explanation as required under O.6 R.17 proviso CPC to come to conclusion that inspite of due diligence petitioner could not raise matter before commencement of trial of suit - Amendment declined”. In reply the counsel for the defendant submitted that he has recently came on record and the earlier counsel not pleaded the said proposed amendment in the written statement which are very much necessary in up-holding their contentions and they intends to lead evidence in the said defence. On considering the ratio held in the said decision, it is appropriate to verify the documents on record. It clearly shows that one Sri. N.K.R and Sri.M.M.P. counsels were represented the present case on behalf of the defendants. After the remand, Sri.K.D.N. counsel has represented on behalf of the defendants. That on 30.01.2020 the counsel for present defendants has filed vakalat after obtaining consent from the previous advocate. As stated supra, the documents enclosed in the present application shows the transaction in respect of Sale Deeds.

11. It is pertinent to note that, as per Apex Court in **AIR 2006 SC 1647- Rajesh Kumar Aggarwal & Ors. Vs. K.K.Modi & Ors**, it is held that, *the court should allow all amendments that may be necessary for determining the real questions in controversy.*

12. On these background I have perused the proposed amendment wherein the defendants highlighted the transactions in respect of item No.1 to 5 of the suit schedule properties, which are very much relevant in deciding the present dispute on hand. Further, the counsel for the plaintiff contended that the natural guardian of the defendant No.3(a) and (b) have filed the present application, which is not maintainable. It is to be noted that along with the present application there is one more application seeking for the discharge of guardian filed by the plaintiff U/O.32 Rule 12(2) r/w Sec.151 of CPC as I.A.No.17 is pending for consideration. The said technical defects does not take away the merit of the application. Further the decision furnished by the plaintiff does not applicable to the present facts and circumstances of the case. Moreover, the plaintiff is getting an opportunity to cross-examine the defendants in respect of the documents furnished by them.

13. Hence on considering all these facts and circumstances of the case and also considering the ratio held in the above decision and after going through the reasons

assigned in the affidavit, I am of the view that, the applicant has shown grounds to allow the application. Further, the proposed amendment not change the nature of the suit and it only raise additional contention. Hence, I answer **Point No.1 in the Affirmative.**

14. **Point No.2:** As per my above discussion in Point No.1, I proceed to pass the following:

ORDER

The application filed by the defendant No.3 under Order 6 Rule 17 of CPC as IA No.16 is hereby allowed on cost of Rs.150/-.

The applicants are permitted to amend the written statement as prayed for.

Since it is an oldest matter, both the counsels are hereby directed to co-operate to the Court for early disposal of the case.

Call on Amendment and furnish the amended written statement by :-

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in the open Court on this the 12th day of February, 2021)

**(Shemida K.)
Prl. Civil Judge & JMFC.,
Malavalli.**