

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC,
NAGAMANGALA**

Dated this 1st day of September 2023

Present: SRI. K.P. SIDDAPPAJI. B.A., L.L.B.,

Addl. Civil Judge and JMFC.,
Nagamangala.

Original Suit No.222/2018

Plaintiff : Sri. Honnappa.

- V/S -

Defendant : Sri. Kullegowda.

RANK OF THE PARTIES ON I.A.No.VIII

**Applicant/
Defendant** : Sri. Krishnappa (G.P.A. Holder).

(By Sri N.S.R. Advocate)

- V/S -

**Opponent/
Plaintiff** : Sri. Honnappa.

(By Sri K.M.P. Advocate)

ORDERS ON I.A.No.VIII

I.A.No.VIII is filed by the Learned Counsel for the Defendant under Order 6 Rule 17 of Code of Civil Procedure for seeking permission of the Court to amend their written statement.

The proposed amendment is as under :

To add in 7th para 4th line after Honnappa I..e, plaintiff "The grandfather name of the plaintiff mentioned in the reg.No.1046 dated 20.08.1970 Pinagundaiana Maga Haruvaiah @ Helavaiah and his son Haruvaiah @ Mariyappa, in sale

deed No.737 dated 20.09.1993 the grandfather name of plaintiff mentioned as Pinagundi Helavaiah, and also in revenue records.” To add in the same para in page No.3, 4th line after Mariyappa “illegally obtained the original documents best known to the plaintiff”

2. The GPA holder of Defendant sworn to an affidavit in support of the application, wherein he has stated that the plaintiff has filed the above suit against defendant for permanent injunction in respect the suit schedule property. The averments that are made in the written statement may be treated as part and parcel of this affidavit. At the time of filing the written statement defendant has unable to instruct the fact as mentioned in the application to advocate due to ignorance non available of documents. Now, discussing about the suit with the advocate told that, the said fact has to be inster in written statement. Hence this application for amend to insert the same in the above suit.

3. It is further submitted that the said reason is not an intentional one. But the above said bonafide reason. This amendment has to be made for perfect adjudication of this suit. And if this amendment is made to the written statement that is not affect the pleadings. So it is just and necessary to amend the written statement in this suit. If the proposed amendment is not allowed, then the said Defendant will be put to hardship and on the contrary if the present application is allowed, no loss or hardship will caused to other side. **With these averments, the GPA holder of Defendant has sought for allowing the application.**

4. The Learned Counsel for the Plaintiff has filed objections to the said application, wherein he has denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. It is contended

that the suit is one for the relief of permanent injunction, in the suit for the injunction, all the burden and issues are casted upon the plaintiff, as such, this application is liable to be dismissed.

5. It is further submitted that, no application for amendment is too allowed after the trial has been commenced, on this ground this application is liable to be dismissed.

6. It is further submitted that, the defendant through this application, tried to introduce the new and fresh matter, which are not required to resolve the dispute between the plaintiff and the defendant. The defendant has sought to introduce old things which were happened before filing of this suit, as well as written statement, because of this application the very purpose of amendment of pleadings is destroying, because, there is no bonafideness in this application, and this application is suffered from lack of bonafideness.

7. It is further submitted that herein before the cross of PW-1 taken as nil, and one more witness examined, then only, the defendant has filed necessary application for recall the PW-1 for cross examination of PW-1, and the said application was allowed, the defendant without examine the PW-1, he sought so many adjournment, as a second through, he filed this application to protract the proceedings to introduce the old and irrelevant matter in to the suit, therefore, the application filed by the defendant for seeking amendment is liable to be dismissed. **With these contentions, the Learned Counsel for the Plaintiff has sought for rejection of I.A.No.VIII.**

8. Heard the Learned Counsel appearing for the parties and perused the materials on record.

9. Now the following points arise for consideration of this Court are.

Point No.1: Whether the GPA holder of the Defendant have made out grounds for allowing I.A.No.VIII and thereby permitting them to amend the written statement as sought for?

Point No.2 : What Order?

10. The findings of this Court on the above points are as under:

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

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

REASONS

11. **Point No.1 :** The present suit is filed by the Plaintiff against the defendant for seeking the relief of Permanent injunction. At this stage, GPA holder of the Defendant wants to amend the written statement by way of inserting 4th line at 7th para. After considering the proposed amendment it appears to this Court that the said GPA holder of the Defendant wants to narrate before the Court regarding name of the Plaintiff and name of father of the plaintiff and name of grand father of the Plaintiff mentioned in the sale deed dated 20.09.1993.

12. After considering the proposed amendment, it appears to this court that the said GPA holder of the Defendant wants to narrate that the Plaintiff has misused his father name and changed Khatha of the suit schedule property, hence the said GPA holder of Defendant has to be permitted to amend the written statement by way of inserting 4th line at 7th para.

13. If the proposed amendment is allowed, it will not affect the interest of the Plaintiff. If the proposed amendment is not allowed and at the later stage if the Defendant wants to rely upon the documents with respect to the said proposed

amendment then it will amounts to receiving the evidence without pleadings. It is well established principle of law that in order to lead evidence, there shall be pleadings. Hence on this ground also this Court is of the opinion that the proposed amendment has to be allowed. hence the application has to be allowed. **With these observations, this Court has answered Point No.1 in the Affirmative.**

14. **Point No.2:** For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

ORDER

I.A.No.VIII filed by the learned counsel for the Defendant under Order 6 Rule 17 of Code of Civil Procedure is hereby allowed on cast of Rs.200/-.

The Learned Counsel for the Defendant is permitted to carry out the amendment as sought for.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me in the Open Court on this 1st day of September, 2023).

(K.P. Siddappaji)
Addl. Civil Judge and JMFC
Nagamangala.