



PRESENT: Sri. Aravindra B.C., *B.A., L.L.B.*,
Senior Civil Judge & JMFC,
K.R.Nagar.

O.S.No. 35/2022

-Versus-

Parties to I.A.No.VI

..... 2nd defendant
(By Sri. M.R., Adv.)

-V / s-

Opponent : Smt. Chowdamma,
D/o Late Chowdanayaka,
Aged about 63 years,

R/at: Arakere Koppalu village,
Kasaba Hobli, K.R.Nagar Taluk.

And also R/at: Nagavala Village,
Ilawala Hobli, Mysuru Taluk.

..... Plaintiff
(By Sri. C.D.M., Adv.)

Provision under which the application is filed	Under Order 6 Rule 17 R/w Section 151 of CPC.
Relief Sought For	Seeking permission to amend the written statement.
The date on which the application is filed	01.08.2024
Number of the application	IA No.VI
The date on which the objections are filed by the different opponents	01.08.2024
The date on which the orders were passed on the said application	31.08.2024

ORDER ON IA.No.VI

The defendant No.2 has filed I.A.No.VI under Order 6 Rule 17 R/w Section 151 of Code of Civil Procedure and seeking permission to amend the written statement by inserting para as 6(a) and 6(b).

2. In the affidavit, which enclosed to I.A.No.VI, wherein the defendant No.2 has stated that, the plaintiff has filed a suit against the defendants for the relief of declaration and permanent injunction in respect of the schedule property. At the time of filing of the written statement, proposed amendment information was not in the knowledge of his counsel. When his counsel prepared for cross examination, on such circumstances only the fact came to his knowledge. Therefore, the proposed amendment is very necessary to adjudicate the matter to settle the matter in all properties to proper justice to the parties in fully determine matter. Hence, the application for amendment is very necessary for best adjudicate the matter. If the application is allowed, no harm will be caused to the other side. Otherwise, the defendant No.2 will be put to great loss and injury. Accordingly, he prays for allow the application.

3. On the other hand, the plaintiff has filed objection to the application. In the objection statement it is stated that, the application filed by the defendant No.2 is not maintainable. He was already filed written statement and denied the right, title, interest and possession of the plaintiff. Hence, the proposed amendment does not require for consideration. Hence, prays for reject the application.

4. Heard and perused the records.

5. The following points that would arise for my consideration is:

1. Whether the defendant No.2 has made out ground that, the proposed amendment to be necessary for the purpose of determining the real question in controversy between the parties?

2. What order?

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

Point No.1	:	In the Affirmative
Point No.2	:	As per final order for the following :

REASONS

7. **Point No.1:-** It is noticed from the pleadings of the parties that, the plaintiff has filed a suit against the defendants for the relief of declaration and permanent injunction. On the other hand, the defendants have appeared before this court and filed written statement. On the basis of rival claimants of the parties, this court framed issues and the trial was completed, when the case posted for defendant's evidence, the present application was filed.

8. Now the question arise before this court is, whether the amendment is necessary for the determination of the real question in controversy between the parties. Before discussion of the above point, this court glance the provision under Order 6 Rule 17 of Code of Civil Procedure. Hence, it is relevant to mention under **Order 6 Rule 17 of Code of Civil Procedure;**

9. Rule 17 provides for amendment of pleading it reads under;

“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.

Provided that no application for amendment shall be allowed after the trial has 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.”

10. The said provision makes it clear that, at any stage of the pleadings allow the either party to alter or amend his pleadings. If the proposed amendment is to be necessary for the purpose of determining the real question in controversy between the parties.

11. It is well settled that, all amendments ought to have been allowed which satisfy the two conditions 1) of not working in justice to other side and 2) of being necessary for

the purpose of determining the real questions in controversy between the parties.

12. It is relevant to refer the decision of Hon'ble Supreme Court of India in the case of **Life Insurance Corporation of India V/s Sanjeev Builders Private Limited** and Another reported in **2022 online SCC 1123** wherein, the Hon'ble Apex Court held as under;-

(i) xxxxx

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order Vi Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided:

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless:

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of

action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay

***Gupta v. Gagninder Kr. Gandhi & Ors., 2022
SCC OnLine Del 1897)***

13. In view of above, all applications for amendment were required to be considered liberally, without considering merits of amendment sought for except where relief sought would be time barred. It is also cautioned that amendments which would result in changing nature of suit or cause of action or where application filed was malafide. It is also observed that mere delay in filing application would not be a ground for denying amendment and where it is sought for bring out real controversy, it was to be allowed.

14. In the instant case, the plaintiff has filed the suit for declaration and permanent injunction with respect to the schedule properties. On the other hand, the defendant has taken contention that, the defendant No.2 taken contention in IA No.VI that, the suit schedule property was not belongs to father of plaintiff by name, Late Chowdanayaka and plaintiff was not sister of Kuntaraya @ Chowdanayaka and

father of plaintiff is a stranger to original owner of plaintiff schedule property. The deceased Puttaningamma and her husband Chowdanayaka were not any issues in their lifetime and plaintiff schedule property was not inherited by them from their ancestors as an ancestral property. Further contented that, the defendant NO.2 is son of Late Siddanayaka. The said Siddanayaka is son of Poojari Siddanayaka. He have one younger brother by name Hulkanayaka S/o Late Chowdanayaka. Further contented that, the plaintiff and defendant No.1 have claimed their right over the plaintiff schedule property through the different stand without having any legal right over the schedule property.

15. On the other hand, the plaintiff has not denied the said fact in the objection statement. The plaintiff stated that, the application is not maintainable because he was already filed written statemetn. Except, the said objection he has seriously not objected the application filed by the defendant No.2.

16. Further important aspect is that, whether the suit schedule property belongs to father of plaintiff or defendant No.2 not consider at this stage. It requires full pledged trial. Moreover, the defendant No.2 cannot withdrawn any admissions from the pleadings and if the defendant is permitted to amend the written statement no harm will be caused to the other side. If the proposed amendment is allowed, the plaintiff has got right to file rejoinder statement. Hence, in order to avoid the multiplicity of the proceedings and principles laid down by the Hon'ble Apex Court as stated supra, the application filed by the defendant No.2 is needs to be allowed. **With these observations, this court answered Point No.1 is in the Affirmative.**

17. **Point No.2:** In view of the discussions and conclusion arrived at Point No.1, this court proceed to pass the following;

ORDER

IA. No.VI filed by defendant No.2 under order 6 Rule 17 R/w Section 151 of C.P.C. is hereby allowed on cost of Rs.500/-.

The defendant No.2 is directed to amend the written statement as prayed for and furnish the amendment plaint within 14 days from the date of this order.

*[Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the Open Court on this the **31st day of August, 2024]***

**(ARAVINDRA B.C.)
SENIOR CIVIL JUDGE & JMFC.,
K.R.NAGAR.**