

ORDER ON IA No.XXIV

The defendant No.22 to 25 have filed I.A.No.XXIV under Order 6 Rule 17 R/w Section 151 of Code of Civil Procedure for seeking permission to amend the written statement by inserting family tree of the Narayanachari in the written statement.

2. In the affidavit, which enclosed to I.A.No.XXIV, wherein the defendants have stated that the plaintiffs have filed the suit against the defendants for the relief of partition and separate possession with respect to the schedule properties. The plaintiffs have suppressed the family tree of the Narayanachari and filed false suit against the defendants. Hence, the genealogical tree of the Narayanachari is necessary to adjudicate the matter between the parties. Therefore, they pray for allow the application.

3. On the other hand, the plaintiffs have not filed objection to the

application to IA No.XXIV. Whereas, the defendant No.1 to 19 filed objection statement. In the objection statement, they have denied the proposed amendment and prays for reject the application.

4. On the basis of the pleadings, the following points arise for my consideration;

1. Whether the defendant No.22 to 25 have made out ground that, the proposed amendment is to be necessary for the purpose of determining the real question in controversy between the parties?

2. What order ?

5. Heard counsel appearing for the plaintiff. Perused the entire records and documents available and my findings on the above points are answered as follows:

Point No.1 : In the Affirmative

**Point No.2 : As per final order
For the following;**

REASONS

6. **Point No.1:-** The plaintiffs have filed a suit against the defendants for the

relief of partition and separate possession. On the other hand, the defendants have filed written statement. On the basis of pleadings of the parties this court has framed issued and trial was commenced. Hence, case posted for defendant's further evidence, the present application filed for seeking permission to amend the written statement by inserting the genealogical tree of the Narayanachari's family.

7. 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.

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;**

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.”

9. 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.

10. 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.

11. 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 Vs. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

12. On perusal of the pleadings of the parties, it is noticed that there is serious dispute regarding the relationship

between parties to the suit. Therefore, in order to prove the relationship of the parties, the genealogical tree of the parties is necessary to adjudicate the matter. If the proposed amendment is allowed, the plaintiffs and other defendants have got right to make file additional written statement as well as rejoinder and further in order to avoid the multiplicity of proceedings, the proposed amendment is allowed. **Hence, this court answered Point No.1 is in the Affirmative.**

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

::ORDER::

The I.A.No.XXIV filed by the defendant No.22 to 25 under Order 6 Rule 17 R/w Section 151 of C.P.C. is hereby ***allowed***.

The defendants are permitted to carryout the amendment and furnish the amended written statement within 14 days from the date of this order.

OS No.43/2016

Call on: 18.08.2025.

**Senior Civil Judge & JMFC.,
K.R.Nagar.**