

KAMS500006992020



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : B. Anupama Lakshmi, B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 6th day of December 2023

O.S./153/2020

Plaintiffs : Madhumalathi V.
-V/s-

Defendants : N.Anil Kumar and others

I.A.

Applicant : Smt.Madhumalathi
-V/s-

Opponents : Sri. N.Anilkumar and others

**ORDERS ON I.A. DATED 29.03.2022 UNDER
ORDER VI RULE 17 R/W SECTION 151 OF CPC**

The plaintiff has filed the I.A. seeking amendment of schedule to the plaint by adding new properties and also to amend the boundaries of items 1 and 2 of schedule 'B' properties, when the case was posted for evidence of plaintiff.

2. The defendant No.2 filed counter statement through his counsel. Defendants 5 and 6 also filed counter statement.

3. Heard both sides. Perused the pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the plaintiff has made out prima-facie grounds to permit her to amend the plaint?

2. What order ?

5. 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 plaintiff has instituted the suit for partition and separate possession of suit schedule properties. The plaintiff wishes to include several properties in the schedule to the plaint on the ground that she came to know that out of joint family funds defendants 1, 2, 5 and 6 have acquired many immovable properties in their names/benami/family members. That out of the joint family funds earned from the business of Sharada Talkies and Lalitha Talkies the properties detailed in the application were purchased. That the defendant No.6 sold a portion of item No.6 along with her husband defendant No.5 and her two daughters to K.P.Vasu and two others and another portion to N.Padmavathi. Defendant No.6 has also purchased certain other properties. She has also acquired item No.7 property under a registered partition deed dated 17.10.2014.

7. That the defendant No.6 is said to be a name lender and has no independent source of income. Plaintiff has claimed a share in the properties sought for inclusion in the suit stating that the said properties are the joint family properties acquired out of joint family funds.

8. Defendants 2, 5 and 6 in their counter statements submitted that, plaintiff has not produced any documents in respect of the properties sought to be included in the suit. That without production and establishing that they are the ancestral joint family properties the plaintiff cannot include the said properties in the suit.

That the properties were sold earlier to the filing of the suit. The plaintiff though is aware of the sale transaction has not included the said properties in the suit, because the said properties are the self-acquired properties of defendants 1, 2, 5 and 6. Therefore, the plaintiff is estopped from claiming the amendment.

9. The learned counsel for the defendants 5 and 6

has relied upon the following decisions:

- 1) Civil Appeal Nos.3703-3750/2022 Asian Hotels (North) Limited Vs. Alok Kumar Lodha and others.
- 2) OP(C)No.2152/2023 Santhosh Kumar P.M. Vs. John M.T. and others
- 3) Writ Petition No.8487/2017 (GM-CPC) H.S.Krishnaiah Vs. H.L.Somashekhar and others, wherein the Hon'ble High Court of Karnataka held that,

“13.3. The person who alleges that the property is a joint family property has to clearly and categorically state as to how the property was acquired, who has been dealing with the property, who is in possession of the property W.P. NO.8487 OF 2017 and how the property has been in joint possession of all the joint family members. It is only after the initial burden is discharged, that the burden of proof shifts on the other person, to prove that it is not a joint family property in rebuttal. The initial burden of proof cannot be ignored. In the present application, there being no manner of stating as to how the property is joint family property or otherwise, the falls foul of the decision of the Delhi High Court in Surrender Kumar's case, which would squarely apply to the present facts and circumstances of the case. 13.4. In view of the above, I answer Point Nos.3 and 4 by holding that no property can be included in a plaint by way of an amendment without specific

averment and allegation being made, that it or they are joint family properties.

10. The learned counsel for the plaintiff has relied upon the following decisions:

- 1) 2007(2) AIR Kar R 359, M/s Hi Sheet Industries Vs. Litelon Limited and others –(A) Specific Relief Act (47 of 1963), S.40(2) - Civil P.C. (5 of 1908), O.6, R.17 – Proviso (as inserted w.e.f. 1.7.2002 by Act 22 of 2002) Limitation Act (36 of 1963), S.3 – Suit for injunction – Amendment of plaint to specify claim for damages in lieu of injunction – Bar of Limitation – Does not apply as a rule – Such amendments are mandatory and are permissible event after commencement of trial,
(B) Civil P.C. (5 of 1908), O.6, R.17 – Proviso (as inserted w.e.f. 1.7.2002 by Act 22 of 2002) – Amendment of plaint – Proviso inserted in 2002 which curtails absolute discretion to allow amendment at any stage – Is prospective in operation.
- 2) (2018) 2 Supreme Court Cases 347 – N.C.Bansal Vs. Uttar Pradesh Financial Corporation and another - In respect of application under Order 6 Rule 17, held, (i) when suit is still at initial stage that is when trial has not yet begun; (ii) where proposed amendment would not change nature of cause of action; (iii) where applications are not filed at belated stage; under these circumstances, courts should be liberal in allowing proposed amendment.
- 3) 2020(3) AKR 351 – Singegowda P.K. Vs. Ningegowda @ Devaraja

- 4) AIR 2022 Supreme Court 4256 – Civil Appeal No.5909/2022 (Arising out of SLP(C)No.22443/2019) – Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, wherein the Hon'ble Apex Court has held that, (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.
- (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.

11. I have perused the decisions. As per the decisions relied upon by the defendants the person who alleges that the property is a joint family property has to clearly state the mode of acquisition of the property and who is in possession of the property and how the property

has been in joint possession of all the joint family members. Otherwise the amendment seeking inclusion of properties cannot be allowed. As per the decisions relied upon by the plaintiff, the prayer for the amendment has to be allowed to avoid multiplicity of proceedings and if the amendment is required for proper adjudication of the dispute.

12. In the case on hand the plaintiff has not produced documents along with the application. However, she has stated that the properties are joint family properties acquired out of the income derived from Sharada Talkies and Lalitha Talkies. She has also narrated that the defendant No.6 had purchased and acquired the property in a partition. Such being the case it cannot be said that plaintiff has not detailed the mode of acquisition. Furthermore burden is upon the plaintiff to prove that the properties are joint family properties which has to be proved at a full dressed trial. Therefore, for proper adjudication of the suit the proposed amendment is

necessary as the application is not filed at a belated stage.

Hence, **point No.1** is answered **in the affirmative**.

13. **Point No.2:-** In view of the findings on the point, this Court proceeds to pass the following:

ORDER

I.A. dated 29.03.2022 filed by the plaintiff under Order VI Rule 17 r/w Section 151 of CPC is allowed with cost of Rs.1,000/-.

Plaintiff is permitted to carry out amendment.

(Dictated to the Stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 6th day of December 2023).

(B. Anupama Lakshmi)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open court
(vide separate order)**

ORDER

I.A. dated 29.03.2022 filed by the plaintiff under Order VI Rule 17 r/w Section 151 of CPC is allowed with cost of Rs.1,000/-.

Plaintiff is permitted to carry out amendment. For amendment of plaint and to furnish amended plaint.

Senior Civil Judge, Nanjangud.