

KAMS710001702019



**IN THE COURT OF
CIVIL JUDGE AND JMFC AT T.N.PURA,MYSURU**

PRESENT : Sri. PRASHANTHA G.C.,BAL., LL.M.,
Civil Judge and JMFC.,
T.Narasipura.

DATED THIS THE 28th DAY OF JANUARY 2022

O.S./31/2019

PLAINTIFF : Smt.Kamalamma

V/s

DEFENDANT : Sri.Akbar Pasha

PARTIES IN I.A. No.III

APPLICANT : Sri.B.M.Linganna GPA holder

V/s

OPPONENT : Sri.Akbara Pashadefendant

ORDERS ON I.A. No.III

The GPA holder of the plaintiff has filed IA No.III under Order 6 Rule 17 R/w Section 151 of the Code of

Civil Procedure 151 of the CPC to carryout the amendment in the plaint as prayed in the application.

2. The GPA holder has filed affidavit in support of IAs.

3. The defendant has filed objections to IA No.3 and prayed to dismiss the same.

4. Heard both the parties and perused the material available on record.

5. The following point has arisen for consideration of this Court.

Whether the plaintiff has made out sufficient grounds to allow the amendment as prayed ? If so what order ?

6. This Court answers the above point in the **Affirmative** for the following.

REASONS

7. The plaintiff has filed the present suit for the relief of permanent injunction, mandatory injunction and delivery of possession.

8. The plaintiff in the affidavit has stated that it is very much necessary to seek declaratory relief in favour of the plaintiff being the manager of Joint Hindu family.

9. The defendant in the objections has stated that, this defendant has taken contention in the written statement that suit is not maintainable for want of relief of declaration and possession. The amendment sought changes the cause of action and nature of the suit.

10. The Counsel for the plaintiff has relied on the decision of the Hon'ble Supreme Court of India in a case between **Sampath Kumar v. Ayyakannu and Anr.** reported in (2002) 7 SCC 559, wherein an application for amendment made 11 years after the date of the institution of the suit to convert through amendment a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. The Supreme Court held that

“Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings

and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

“An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct

that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, [2001] 8 SCC 561”.

“In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be

defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.”

11. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. In the present case the trial has not commenced. Hence, Pre-trial amendments are to be allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof.

12. The plea to amend the plaint though changes nature of the suit has to be allowed because such leave would avoid multiplicity of proceedings. For the above said reasons this Court answers aforesaid point in the **Affirmative**. In the result this Court proceeds to pass the following;

ORDERS

I.A.No.III filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of the Code of Civil Procedure is hereby *allowed on cost of Rs.500/- payable to the defendants.*

The plaintiff is permitted to carry out the amendment in the plaint as prayed in the IA.

For amendment of plaint, to file amended plaint, to pay cost and to pay court fee by

(Typed by the Stenographer, typed directly in the computer on my dictation, printout taken, corrected and then pronounced by me in the open court on 28.01.2022).

(PRASHANTHA G.C.)
Civil Judge and JMFC.,
T.Narasipura.