

IN THE COURT OF ADDL SR. CIVIL JUDGE & JMFC-I.,**AT:RAICHUR****DATED THIS THE 17th DAY OF JANUARY, 2023**

PRESENT: Sri. MAHAJAN RAMESH APPASAB,
B.A., LL.B.,(SPL),
C/c Addl.Sr.Civil Judge & JMFC., Raichur,
II-Addl. Sr.Civil Judge & JMFC.,
Raichur.

OS No.222/2013

PLAINTIFF/S:- Sri. G. Suresh Babu S/o late. G. Earanna
Rao @ Chota Veeranna,

(By Sri. BS., Advocate)

- VERSUS -

DEFENDANT/S:- Smt. G. Ratna Bai W/o late. G.
Earanna Rao @ Chota Veeranna &
Ors.,
(D1 by Sri. Girija, Advocate)
(D2 to 4, 8 & 9 GAG Advocate)
(D5 & 6 by Sri RJS., Advocate)

PARTIES ON I.A.NO.19

APPLICANTS/ Arathi G. D/o Ramesh Gaddal,
Def No.3 & 4

- VERSUS -

OPPONENTS/ G. Suresh Babu S/o late. G. Earanna.,
Plaintiff

ORDERS ON I.A.NO.19

Defendant No.3 and 4 filed IA No.19 U/o 6 rule 17 R/w 151 of
CPC and prayed for permission to carried out proposed amendment

in their written statement of deceased defendant No.1.

2. In the supporting affidavit, it is averred that plaintiff filed this suit for relief of partition and separate possession. Now the matter is fixed for cross of DW.2. It is averred that the defendant No.2 was pursuing the proceedings and now in view of his death they came to know about technical mistakes in written statement of defendant No.1 which was adopted by them. It is averred that they were not aware about the said mistakes and recently they came across the same and filed this application. It is averred that the if application is allowed no prejudice or hardship will be caused and prayed for allowing application.

3. The plaintiff filed objection contending that the evidence of plaintiff has been completed on 08.01.2019 and evidence of defendant No.1(a) has also completed. Further, the amendment sought amounts to distrction of admission made in the written statement which prejuduices the plaintiff. The amendment is contrary to the facts narrated in the written statement filed by defendant No.1(a) and the same is not permissible. Accordingly, plaintiff prayed for rejecting the application.

4. I have heard the learned counsel for plaintiff and defendants.

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

1. Whether defendant No.3 and 4 have made out sufficient grounds to allow the application?
2. What order ?

6. My answer to the above said points are as under:-

Point No.1 : **Partly in Affirmative.**

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

REASONS

7. Point No.1:- Heard both side on IA No.19 filed U/o 6 Rule 17 of CPC. Learned counsel for Def No..3, 4 and 8 has relied on decision of Hon'ble Apex court in Civil Appeal no.6324/2008. Learned counsel for plaintiff which has relied on decision reported in AIR 1977 SC 680. I have gone through the observation of Hon'ble Apex Court in both the decisions. The defendants intends to correct the typographical mistake with reference to number of Defendants appearing in the Written statement. The amendment so far typographical mistake is concern, plaintiff has not objected for the same,. However there is serous objection raised with regard to exclusion of pleadings regarding adverse possession pleaded by the

original Def No.1 which later came to be adopted by Def No.3 and 4 by way of filing memo.

8. I have gone through the written statement para No.12 particularly line No.19 to 25. Wherein the original defendant has asserted perfecting title by way of adverse possession and extinguishment of right of plaintiff. Now the present defendant No.3 and 4 by way of this amendment intends to delete the said contention raised in written statement filed by defendant No.1 and adopted by defendant No.3 and 4. It is settled proposition of law that after commenced of trial court, there is rider by way of proviso to Order 6 rule 17 of CPC which debars the amendment if they are not necessary to resolve real point in controversy.

9. Further in decision reported in **AIR 1977 SC 680** the Hon'ble Apex Court has observed that the admission in pleading cannot be permitted to be withdrawn. The said proposition of law is no more res-integra. Even in the decision referred by learned counsel for defendant No.3 and 4 the Hon'ble Apex Court observed that the amendments which are necessary for resolving real point in controversy needs to be allowed. As it is can be borne out that defendants have asserted their title by way of adverse possession and impliedly admitted the

ownership of plaintiff. If proposed amendment is allowed then it amounts to withdrawal of admission from the pleadings which cannot be permitted. The amendment is not necessary so as to resolve real point in controversy between the parties. In view of the matter, I do not find any grounds to allow the application so far permission to delete line 19 to 25 from the written statement of defendant No.1. So far technical mistakes as prayed at point No.1 to 3 of IA No.19 the same needs to be allowed Accordingly, I answer point No.1 partly in affirmative

10. Point No.2:- For the above said reasons on point No.1, I proceed to pass the following:-

ORDER

IA No.19 filed by the defendant No.3 & 4 under Order 6 Rule 17 of CPC., is allowed in part.

Defendant No.3, 4 and 8 are permitted to carried out amendment in their written statement so far point No.1 to 3 are concerned to extent of correcting typographical mistakes.

(Dictated to the Stenographer, transcript and typed by him, script corrected, signed and then pronounced in the open Court by me on this the 17th day of January, 2023).

(MAHAJAN RAMESH APPASAB)

C/c of Addl.Sr.CJ and JMFC-I.,
Raichur.