

**Orders on IA filed under Order VI Rule 17 R/w**  
**Section 151 of C.P.C.,**

The applicants/plaintiffs filed the application to permit the plaintiffs to amend the plaint by inserting “two paragraphs” in the plaint as detailed in the application.

2. In the affidavit annexed to the application, the defendant No.4 who is transposed as the plaintiff No.2 has stated that, the defendant No.3 in January-1999 approached her and obtained her LTM and that of her sister on certain typed papers and forms assuring that, he would initiate steps to get shares of the deponent and her sister. However, the defendant No.3 did not give any details and a few years after, the defendant No.3 said that, it will take a long time to decide shares of parties.

That the applicant has learnt during the cross examination of the Pw-1 that, the defendant No.3 has made use of the papers marked by the applicant to file a suit for partition without informing the applicant. That the defendant No.3 who appeared in OS.No.6/1997 as the defendant No.1 submitted his no objections to decree the suit. That it appears that, during the pendency of OS.No.6/1997 the present defendants No.1 and 3 entered into a sham partition deed on 04-08-1999. That the applicant has not consented for such a sham transaction. Therefore, in this regard, the applicant could not amend the plaint earlier. Hence, the application.

3. The opponent/defendant No.3 filed statement of objections stating that, no amendment of pleadings shall be allowed after the trial has commenced. That the suit was filed by the plaintiff who is the son of defendant No.1 and at present he is residing in USA. Evidence and cross examination of original plaintiff is completed. The plaintiffs No.2 to 4 who were initially arrayed as the defendants No.4, 6 and 7 respectively later got transposed as the plaintiffs No.2 to 4. They have also examined themselves and their cross examination was done by the defendants.

That the sisters of the defendant No.3 filed suit for partition in OS.No.6/1997 before this Court against the defendant No.3 and his brother and the said suit was dismissed for non-prosecution. That the suit properties fell to the share of the defendant No.3 under a partition deed dated:07-09-1999. Therefore, the present suit is barred by limitation.

That the plaintiffs No.2 to 4 are guilty of suppression of material facts. The said plaintiffs are aware of the partition deed and since they were parties to OS.No.6/1997 are estopped from introducing new case and cause of action. Therefore, the defendant No.3 prayed for dismissal of the application with exemplary costs.

4. Heard.

5. The learned counsel for the plaintiffs has relied upon the following decisions:

*LAWS(KAR) 2017 11 201*

*H.S.Srinivasamurthy V/s H.C.Shivaramaiah*

*(2017) 5 SCC 212*

*Chakeshwari Construction Private Limited V/s Manohar Lal*

*Some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

- 1. Whether the amendment sought is imperative for proper and effective adjudication of the case;*
- 2. Whether the application for amendment is bona fide or mala fide;*
- 3. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- 4. refusing amendment would in fact lead to injustice or lead to multiple litigation;*

*LAWS(KAR) 2018 1 177*

*Rani V/s Vinod Kumar and Others*

*AIR 2008 SC 2635*

*Gurbakhsh Singh and Others V/s Buta Singh and Another*

*Civil P.C.(5 of 1908), O.6 Rule.17 - Amendment of plaint - Suit for declaration on basis of reversionary rights decreed exparte- Setting aside exparte decree - Specific Khasra numbers sought to be specified by way of amendment - At time of amendment only two official witnesses were examined - Proposed amendment neither changing character nature off suit nor introducing any fresh ground - Amendment allowed.*

6. The suit is for partition and separate possession of the suit schedule properties and declaration that, the partition deed dated:07-09-1999 is not binding on the plaintiffs. In this case, after completion of cross examination of Pw-3 on 05-01-2019, an IA under Order XVI Rule 6 of CPC., was filed by the plaintiff. On 11-02-2019 i.e., on the next date of hearing the present application is filed.

According to the applicant, from the suggestions made to the Pw-1 in the cross examination she came to know of the details mentioned in her affidavit annexed to the

application. The applicant wishes to insert the contentions made in her affidavit in the plaint by way of amendment.

7. As per Order VI Rule 17 of CPC., no amendment shall be allowed after commencement of trial. However, if the Court is of the view that, in spite of due diligence the party could not raise the matter before the commencement of trial then such an application can be allowed.

As per the decision cited above in serial No.1 the Hon'ble High Court of Karnataka held that, the amendment sought for is imperative for adjudication of the case of the plaintiff. If amendment is refused, it would lead to injustice and multiplicity of litigation. Therefore, proposed amendment will not change the nature of the suit. The Trial Court ought to have allowed the said application. Accordingly, the Hon'ble High Court allowed the application for amendment.

As per the decision cited above in serial No.3 the Hon'ble High Court of Karnataka confirmed the orders of Trial Court of allowing the amendment application.

8. In the present case though the suit is of the year 2013 evidence of the Pw-1 was concluded on 10-01-2018 and the present application was filed on 11-02-2019. Contention of the applicant is that, as per the suggestions made to the Pw-1 in the cross examination she came to know of the details, which are narrated in the proposed

amendment. If contention of the applicant were true then she could have filed the application after conclusion of cross examination of Pw-1. But, she has waited till completion of evidence of the plaintiffs.

9. Be that as it may. Though, there is delay in filing the application, the proposed amendment will not change nature of the suit and cause of action. Moreover, the proposed amendment is necessary for the proper adjudication of the suit. Because, the plaintiffs have also sought for the relief of declaration that, the partition deed dated:07-09-1999 is not binding on the plaintiff. Such being the case, when the burden is upon the plaintiffs to prove their case by allowing the application with imposition of costs, the defendants will not suffer hardship. Therefore, the following:

**ORDER**

IA filed by the applicants/plaintiffs under Order VI Rule 17 R/w Section 151 of CPC., is allowed with costs of Rs.700.

The plaintiffs are permitted to carry out amendment.

For amendment of plaint and to furnish amended plaint.

By:

**Addl. Senior Civil Judge & JMFC.,  
Ramanagara.**