

KARN320022582016



Presented on : 28-11-2016
Registered on : 28-11-2016

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
KANAKAPURA

Present: Smt. Radha S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Kanakapura.

Dated this the 13th day of August 2025

O.S./504/2016

Plaintiff:- Sri. Santhoshkumar
S/o Kalaiah
Aged about 9 years,

Since minor represented
By his natural guardian
And mother Meenakshi
W/o Kalaiah

R/at: Vaddara Colony Village,
Kirugavalu Hobli,,
Malavalli Taluk,
Mandya District.

(By Sri. T.N.G. Advocate)

.Vs.

Defendants:- 1. Sri. Hanumaiah @ Masiaiah
S/o late Masiaiah,
Aged about 71 years,



2. Sri. Kalaiah
S/o Hanumanthaiah,
Aged about 38 years,
3. Sri. Abhishek
S/o late Nagaraju,
Aged about 24 years,
4. Sri. Chandrashekara
S/o late Nagaraju,
Aged about 22 years,
5. Sri. Appajachar
S/o late Puttachar,
Aged about 45 years,

All are R/o:
Sorekaidoddy Village,
Sathanur Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. S.T.N Advocate)

PARTIES TO IA No.VII

Applicant/ defendants : Sri. Vishwanath
LR's of 5th Defendant

Vs.

Opponent / plaintiff: Sri. Santhoshkumar

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Kanakapura.



ORDERS ON I.A.NO.7

This is an application filed by defendant No.5(a) and 5(b) Under Order VI Rule 17 R/w Section 151 of Code of Civil Procedure, 1908 with a prayer to permit them to amend their written statement by incorporating the paragraph No.14(a) and 14(b) after paragraph No.14 as sought in the application.

2. The present application is supported by the affidavit of defendant No.5(b), wherein he has reiterated the contentions raised in the application. In addition to that, it is stated by him that the defendant No.1 and his mother viz Smt.Guruvamma have sold measuring 2 acres 20 guntas of land in Sy.No.52 in favour of one Kariyaiah S/o Javarayikariyaiah. But at the time of execution of sale deed, the survey number is wrongly mentioned as 51/1 instead of Sy.No.52. As such the defendant No.1 and his mother have executed rectification deed dated 05-10-1989 in favour of said Kariyaiah. Later the said Kariyaiah has sold the above said 2 acres 20 guntas of land in Sy.No.52 in favour of one D.M. Vishwanath S/o Marugegowda. The plaintiff intentionally has not included the said property in the present suit. As such the pleadings with regard to the above said sale transaction has to be inserted in the written statement. Hence the facts which are intending to



introduce by way of amendment are pertaining to material facts and touching the crucial issue for redressal of the real dispute between the parties. The proposed amendment will never change the nature of the defence as such, it is just and necessary to decide the controversies between the parties. On all these grounds, the defendant No.5(a) and 5(b) sought for allowing the application.

3. Per contra, the plaintiff has filed his objections to the present application. Wherein the plaintiff has denied the entire contents of application and affidavit as well. In the objections the plaintiff contented that the defendant No.5(a) and 5(b) are intending to withdraw some admissions from the pleadings. The defendant No.5(a) and 5(b) are now trying to introduce certain facts which are not pleaded in their previous written statement. Only in order to fill up the lacunas, the defendant No.5(a) and 5(b) have come up with present application at this stage as such the present application is not maintainable at this stage and liable to be dismissed. The present suit is filed only for partition and separate possession in respect of his ancestral and joint family properties as such it is for the plaintiff to prove his case independently, hence the proposed amendment is not at all necessary for adjudication of the subject matter. On these grounds the plaintiff prayed to dismiss the application.



4. Heard the arguments of the learned counsel for defendant No.5(a) and 5(b) and the learned counsel for plaintiff at length in great detail on I.A.No.7. Scrutinized the records of the case.

5. On scrutiny of records of the case and having heard arguments, following points arise for consideration:

1. Whether defendant No.5(a) and 5(b) have made out sufficient grounds for granting leave to them to amend the written statement as sought for ?

2. What order ?

6. My findings to the above points as under:

Point No.1 : In the Affirmative.

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

REASONS

7. REASONING ON POINT NO.1:- The present suit is filed by the plaintiff for partition and separate possession in respect of suit schedule properties. When the case was posted for further cross examination of PW1, the defendant No.5(a) and 5(b) have come up with this application. It is pertinent to note that, in the present case defendants side evidence is not yet completed. Under such circumstances, let me examine whether defendants are entitled to amend the written statement at this juncture.



In this context it is necessary to know the object of amendment brought to Code of Civil Procedure, 1908 in the year 2002, Order VI Rule 17 of Code of Civil Procedure puts an embargo on the power of the court to grant leave to parties to amend the pleadings at any stage of the proceedings. The said provision introduces the rider that once trial has commenced, unless the party who wants to amend his/her/their pleadings, has to demonstrate that, in spite of exercising due diligence, application for amendment could not be filed at the earliest possibility opportunity, then only application can be entertained.

8. In order to decide the controversy between the parties, it is necessary to refer the provision governing amendment of pleadings.

Order VI Rule 17 of Code of Civil Procedure, 1908 deals with the amendment of pleadings, which reads thus:

“17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and so 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. It is well settled law that criterion to decide the application for amendment of pleadings be subject to certain conditions namely:

1. When the nature of it change by permitting amendment;

2. When amendment would result in introducing new cause of action and intending to prejudice other party;

3. When allowing amendment application, defeats law of limitation.

10. Some basic principles emerge which ought to be taken into consideration while allowing or rejecting the



application for amendment. whether the amendment sought is imperative for proper and effective adjudication of the case; whether the application for amendment is bona-fide or mala-fide; the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; refusing amendment would in fact lead to injustice or lead to multiple litigation; whether the proposed amendment constitutionally or fundamentally changes the nature and changes the nature and character of the case; and As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 rule 17. These are only illustrative and not exhaustive. On having glance over above referred provision of law, it becomes clear that, the court can grant leave to parties to amend their pleadings at any stage of proceedings. This power is subject to condition that, once trial has begun, unless party seeking amendment of the pleadings establishes that, in spite of exercising due diligence, he could not file application for amendment prior to commencement of trial, then said provision puts an embargo on the fetters of the court to grant leave for amendment of pleadings. The present application is to be considered in the light of the statutory



mandate contained under Order VI Rule 17 of Code of Civil Procedure, 1908.

11. Adverting to the factual score of the present case, the paragraph No.14(a) and 14(b) which is tried to be inserted by defendants No.5(a) and 5(b) is nothing but explanation or rider to the contentions raised by them in their earlier written statement as stands today. Since the plaintiff has filed this suit against the defendants with some reliefs as such the defendants No.5(a) and 5(b) should be given every opportunity to defend the same. More over the defendant No.5(a) and 5(b) have recently brought on record as the Lrs of deceased defendant No.5. Under such circumstances, the proposed amendment will not cause any prejudice to the plaintiff as he is not at all surprised with the proposed amendment. More over the defendant No.5(a) and 5(b) are intending to introduce some facts with regard to registered document executed by the defendant No.1 and his mother as such the heavy burden will be upon the defendants No.5(a) and 5(b) to prove the said facts. The nature of the defence will not be changed by virtue of proposed amendment. However, proposed amendment intends to add the explanation and rider to the pleadings already taken by the defendants No.5(a) and 5(b) and it is for the defendants No.5(a) and 5(b) to prove those pleadings.



12. I have perused the averments of the plaint, application and objections. While allowing this application, no harm or injury would be caused to the plaintiff and it will not amount to retraction of any admissions. Under such circumstances, the proposed amendment will not cause any prejudice to the plaintiff as he will get every opportunity to cross examine the defendants No.5(a) and 5(b) in this regard as well. The nature of the defence will not be changed by virtue of proposed amendment. Hence, viewed from any angle, defendants No.5(a) and 5(b) have made out grounds for allowing the application. With these observations, this court answers the point No.1 in the Affirmative.

13. REASONING ON POINT NO.2:- For the reasons stated above, this court proceeds to pass the following:

ORDER

I.A No.7 filed by the defendants No.5(a) and 5(b) Under Order VI Rule 17 R/w Section 151 of Code of Civil Procedure, 1908 is hereby allowed on cost of Rs.300/-.



Defendants No.5(a) and 5(b) are permitted to amend their written statement as sought in the application and shall furnish the amended written statement.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on **13th day of August 2025.**)

(RADHA.S)
Prl. Civil Judge & JMFC.,
Kanakapura.