

KARN410000812016



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT: MAGADI.**

Present:

Sri.Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC., Magadi.

Dated: this the 15th day of July, 2022

OS.No.48/2016

Plaintiff : Sri. Srinivasamurthy,
S/o. Late. G. Ramachandraiah,
Aged about 61 years,
R/at: Ganapathyhalli Village,
Tavarekere Hobli,
Bangalore South Taluk.

(By **Sri. N.K.K.** Advocate)

V/s

Defendants : 1. Sri. Siddalingaiah,
S/o. Late. Nagashetty,
Since dead by his L.Rs.,

(a) Sridhara,
S/o. Late. Siddalingaiah,
Aged about 45 years,

(b) Shivakumar,
S/o. Late. Siddalingaiah,

Aged about 43 years,

(c) Krishna Murthy,
S/o. Late. Siddalingaiah,
Aged about 41 years,

(d) Mruthunjaya,
S/o. Late. Siddalingaiah,
Aged about 38 years,

(e) Dinesh,
S/o. Late. Siddalingaiah,
Aged about 36 years,

All are R/at.
Ganapathyhalli Village,
Tavarekere Hobli,
Bangalore South Taluk.

(By **Sri. G.P.** Advocate)

ORDER ON IA NO.V

The present suit is for declaration, possession and mandatory injunction.

2. The plaintiff has filed the present application U/o.VI rule 17 of CPC seeking permission of this court to allow him to amend the plaint. The plaintiff in his affidavit submits that he did not plead the proposed amendment while filing the suit. The proposed amendment is necessary for adjudication of the suit. In this regard, the plaintiff prays as above.

3. The L.Rs., of defendant no.1 in their contended that the proposed amendment is not necessary. The plaintiff has sworn false averments. In this regard, the L.Rs., of defendant no.1 prays to reject the application.

4. Heard arguments of the counsel.

5. Considering the contentions of the counsel, following points arise for my consideration.

1. *Whether the amendment sought for is necessary to determine the real question in controversy?*
2. *What order?*

6. My findings for the above points are as under;

Point no.1 : In the affirmative

Point no.2 : As per final order,
For the following;

REASONS

7. **Point no.1**:- The plaintiff has sought permission of this court to allow him to amend the plaint. In this regard, I have perused the amendment sought for and I have also perused the plaint.

Considering the same, it is clear that the plaintiff intends to add facts about suit bearing O.S.No.229/2014 and R.A.No.37/2018. In this regard, the plaintiff intends to add facts to the present case. As such, the plaintiff intends to plead his case comprehensively. Be it stated, the present suit is one for declaration, possession and mandatory injunction. Considering, the questions that need to be answered in the present suit, I am of the view that incorporation of the proposed amendment is necessary so as to determine real question in controversy.

8. Further, on perusal of the application it appears that in spite of due diligence the plaintiff could not have raised the matter before the commencement of the trial. So also, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held thus;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and

prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that the contentions of L.Rs., of defendant no.1 is of no avail to them at this stage of the trial.

9. On perusal of the proposed amendment it appears that the proposed amendment does not intend to bring new case, on the other hand the amendment proposes to make the suit comprehensive. The proposed amendment if brought on record, the cause of action existing and the nature of the suit will remain unharmed. If the proposed amendment is allowed the nature of the suit will not be changed and the basic structure remains unharmed. Considering the questions that need to be determined in the present suit and in view of the purpose the proposed amendment intends to achieve, I am of the view that, the proposed amendment is necessary to be carried out to determine real question in controversy.

10. It is to be noted that plaintiff has every right to put-forth his grievances and he is the master of his averments, this being the case

if proposed amendment is not allowed to be carried out the plaintiff cannot put-forth his case effectively and completely and bring clarity in the facts alleged. Considering this, I am of the view that, opportunity should be accorded to the plaintiff to put-forth his case in its entirety by carrying out the amendment.

11. Furthermore, if the proposed amendment is not allowed to be carried out the inconvenience which may be caused to the plaintiff is more than the inconvenience, which may be caused to the defendants if the same is allowed to be carried out. Further, if amendment is not allowed the injury which may be sustained by the plaintiff cannot be compensated at any cost. On the other hand, the defendants will have an opportunity to contest the matter and get the same decided on merits.

12. In this circumstances, considering the plaint, the application, the objection and the proposed amendment, I am of the view that in the interest of justice and equity it is necessary that the proposed amendment be incorporated in the plaint so as to determine real question in controversy and to make the suit comprehensive. In these

circumstances, I decide point No.1 in the affirmative.

13. **Point no.2**:- In view of reasons on point No.1 and in the interest of justice and equity, I proceed to pass the following;

ORDER

**IA No.V filed U/o.VI Rule 17 R/w. Sec.151 of
CPC filed by the plaintiff is hereby allowed on
cost of Rs.200/-.**

(Dictated to the stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the **15th day of July, 2022.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi**