

**IN THE COURT OF THE II ADDL.CIVIL JUDGE & JMFC, AT
MAGADI**

PRESENT

**SMT. NALINA S.C. B.A, LL.B.,
II Addl.Civil Judge & JMFC,
Magadi**

Dated this 4th day of January 2021

O.S. NO.269/2010

PLAINTIFF : Sri. R.Ranganarasimhaiah

-Vs-

DEFENDANT : Sri. Ramachandraiah and another

I.A.No.XIII

APPLICANT/

DEFENDANT No.2 : Sri. Thopaiah
S/o Late Shambaiah,
Aged about 55 years,
R/at: Govinagamangala
Village, Madbal Hobli,
Magadi Taluk

-V/s-

OPPONENT/

PLAINITIFF : Sri. R.Ranganarasimhaiah

ORDERS ON IA.No.XIII

This is an application filed by the defendant No.2 under order VI rule 17 R/w Section 151 C.P.C seeking amend the plaint as sought in the IA.No.XIII.

2. The averments of the affidavit filed in support of the application are as follows:-

The plaintiff has filed this suit for the relief of declaration and others. The defendant No.2 did not notice the fact that the sisters of plaintiff and defendant No.1 were not made parties to this suit while filing written statement by oversight and the same was noticed by him at the time of giving instructions to conduct cross examination of PW.1. The plea of non-joinder of necessary party is very much necessary for proper adjudication of this case. The proposed amendment will not change the nature and cause of action of the suit and the plaintiffs will not be put to any hardship and injury. Hence, allow the application.

3. On the other hand the plaintiff filed objection to the said application. In the objection the plaintiff sated that the

Application filed by the defendant No.2 is not maintainable either in law or on facts the same is liable to be dismissed in limine. The plaintiff further contended that, in the plaint the relief is sought in respect of the document executed by the 1st defendant in faovur of th 2nd defendant, the sisters of the plaintiff and this defendant Smt. Rajamma and Smt. Manjua who are no the parties executed the document sought to be the parties to be canceled. It is further contended that, in this case the evidence is commenced very long back and after the trial was commenced, the present application is filed, hence, the 2nd defendant is not diligent nor satisfactory explanation is given in the accompanying affidavit of the application and has failed explain how the sisters of the parties are necessary parties to th above proceedings. Hence, application filed by the plaintiff is deserve to be rejected with cost.

4. The following points are arise for my consideration:-

POINTS

1. Whether the applicant/plaintiff prove that the application filed by his is deserves to be allowed?
2. What order?

5. Heard the argument from the defendant No.2 side. The counsel for the plaintiff filed an written argument. This court perused the written argument filed by the counsel for the plaintiff and perused the all the materials on record answer the above points as follows:-

Point No.1:- In the Affirmative

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

REASONS

6. **Point No.1:-** The plaintiff filed this suit against the defendants for the relief of declared that, the sale deed dated 03.07.2000 is null and void and recovery of possession, damages, permanent injunction and other reliefs in respect of suit schedule property. This application is filed by defendant No.2 seeking amendment of written statement. In the application the defendant No.2 stated that at the time of filing written statement by oversight can not impaled the proposed fact in the written statement but plaintiff objected that said pleading is not necessary for adjudication in the present suit.

7. In order to find out whether the Application of the defendant under Order VI Rule 17 for amendment of pleading is bona-fide and sustainable at this stage or not, it is useful

to refer to the relevant provisions of CPC. Order VI Rule 17 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 on 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.”

8. The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The principles that guide the exercise of discretion in allowing the amendment are that, multiplicity of proceedings should be avoided. That amendments which do not totally alter the character of

action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretense of amendment.

9. In the present case on hand the matter posted for the cross-examination of PW-1 i.e., after commencement of the trial. As such the defendant has to show the due diligence for filing this application. On perusal of the reason mentioned in the affidavit clearly show that at the time of giving instruction to counsel for cross examination of PW1 only come to know that the proposed pleading is necessary for proper adjudication. The said fact does not denied by the plaintiff. Hence, considering that, the defendant prove the due diligence to file this application.

10. It is settled law that inconsistent pleas can be raised by a defendant in his written statement although the same may not be permissible in case of a plaint.

1. In the matter of: **M/s. Modi Spinning & Weaving Mills Co. Ltd. & Anr.v.M/s. Ladha Ram Co.**, (1976) 4 SCC 320, the Hon'ble Supreme Court of India while clarifying the position with regard to law of amendment of pleadings clearly enunciated that "*inconsistent or alternative pleas can*

be made in the written statement. But by virtue of amendment of pleadings, a party to a lis cannot be allowed to withdraw the admissions made by it in the pleadings filed by it before the court. Nonetheless, a party is always free to explain and/or clarify the admissions made by it in the pleadings filed by it before the court by preferring an amendment application.

The defendant has right to take alternation please in defence by way of amendment. Though the defendant is a liberty to take contradiction stands in his written statement, is not entitled to amend the written statement taking away an admission already made in the written statement in favour of the plaintiff which would is amount to total displacing the case of the plaintiff and which would causing irretrievable prejudice.

The opposite party did not suffer any prejudice as a result of an amendment effected to the pleading by the other party. Error or mistake which is not fraudulent, it should not be rejected”.

11. In the present application if the proposed amendment allow, the nature of the suit does not change and the plaintiff has not put in to any hardship. If the defendant is permitted go on with the further pleading, the suit will be ended in a single trial, failing which, there will be scope for multiplicity of proceedings. Therefore, at this stage, the defendant/applicant

has made out the ground that, the proposed amendment is necessary to determine the real controversy between the parties.

12. Hence, it appears that, the defendant filed this application with due diligent. On considering all these points the application is required to be allowed. Accordingly, the Points under consideration are answered in the Affirmative.

13. **POINT NO.3:** - In view of the above discussion and answering the above Points, I proceed to pass the following:

O R D E R

I.A. No.IV filed by the plaintiff under Order VI Rule 17 of C.P.C. is hereby allowed with cost of Rs.5,00/-

For amendment of pliant and for filing amended
plaint

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open Court on this the 4th day of January 2021)

(NALINA S.C.)
II Addl Civil Judge & J.M.F.C
Magadi.

