

KATK300012422019



**IN THE COURT OF THE SENIOR CIVIL JUDGE, AT
GUBBI.**

Dated this the 6th Day of September 2021.

**Present: Undi Manjula Shivappa,
B.Sc.LLM.,
Senior Civil Judge.**

O.S.89/2019

Plaintiff : G.A. Khadar Sab

V/s

Defendant: PDO & Others

I.A.No.IV/2020

Applicant: G.A. Khadar Sab

V/s

Opponents: PDO & Others

ORDER

The applicant/plaintiff has filed this I.A under Order VI Rule 17 of CPC seeking to amend the plaint by way of insertion.

2. In the affidavit, the applicant has stated that he has filed the suit against the defendants for the relief as sought in the plaint and the proposed amendment sought in the application is very essential and it will not change the cause of action. It is necessary for the reasons even though registered sale deeds are in his name from the year 1974 and the same has not been challenged in any of the court in any form from more than 46 years and it has remained undisputed from thereon, he is in possession of the suit schedule properties, but defendant No.1 refused to mutate panchayath records in his name only on the influence of other defendants troubling his family. If the amendment sought is allowed, no hardship or injury will cause to the defendants, if it is not allowed, he will

be put to grave injustice and irreparable loss. Hence the applicant prayed to allow the I.A.

3. The defendants have filed objections by contending that application is not maintainable either in law or on facts. The plaintiff has filed the application when the case is posted for evidence just to drag on the proceedings. The facts stated in the proposed amendment changes the nature of the suit and cause of action. The proposed amendment is not necessary for adjudication of the case. The proposed amendment if allowed, suit stands barred by limitation and hence defendants have prayed to dismiss the I.A. with cost.

4. I have heard on both side and perused record.

5. The following points arise for my consideration:

- 1) Whether the proposed amendment is required for resolving the real controversy between the parties?
- 2) What order?

6. My answers to the above points are as follows:

Point No.1 : In the Affirmative.

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

REASONS

7. **POINT No.1:** The plaintiff has filed the application under Order VI Rule 17 of CPC seeking to amend the plaint by way of inserting the facts as sought in the plaint.

8. I have gone through the pleading of both parties and also heard the arguments of both counsels on I.A. No.IV which is filed by the plaintiff under Order VI Rule 17 r/w Sec.151 of CPC seeking to amend the plaint as proposed. The plaintiff counsel vehemently argued that present suit is filed by the plaintiff seeking relief of declaration and permanent injunction against the defendants in respect of the suit schedule properties. He claim his ownership over the suit schedule properties on the strength of registered sale deeds as mentioned in the plaint. Admittedly these properties have not

been mutated in the name of plaintiff in the panchayath records, in spite of having registered sale deed in the name of plaintiff. Hence in order to explain these things the proposed amendment is necessary, prays to allow the application. If this application is not allowed, it will cause hardship to the plaintiff.

9. On the other hand the defendants counsel vehemently argued that the proposed amendment changes the nature of the suit. The proposed amendment if allowed, suit stands barred by law of limitation. Unless the application is allowed unless the permission is granted to amend the plaint these fact cannot be considered where time barred suit or not, only after the amendment said Issue can be framed.

10. I have gone through the proposed amendment sought by the plaintiff in I.A. No.IV also. Simultaneously, I have gone through the plaint averments it reveals that plaintiff is seeking declaration of ownership over the suit schedule properties on

the basis of several registered sale deeds. Admittedly upon these sale deeds his name has not been mutated in the panchayath records, then it is necessary fact which plaintiff ought to establish or to prove at the time of trial because these registered sale deeds are more than 30 years old. Then definitely question will arise inspite of having registered sale deeds in respect of suit schedule properties in favour of the plaintiff more than 30 years why he could not try to get mutate his name in the panchayath records, Then it is very much necessary to the plaintiff to prove the said fact, without pleading the plaintiff cannot prove those facts. Moreover if this application is allowed, the nature of the suit will not change. These proposed facts are very much necessary to establish the case of the plaintiff and these facts are very much necessary to determine the real question between the parties. These amendment will not change the nature of the suit and not cause any harm to the defendants. Moreover the suit of the case is for plaintiff's evidence it is initial stage, hence it is

necessary to allow the application. Hence Point No.1 is answered in the Affirmative.

11. **POINT No.2:** For the aforesaid reasons and findings on Point No.1, I proceed to pass the following:-

ORDER

I.A. No.IV filed under Order VI Rule 17 of CPC is allowed on cost of Rs.300/-.

Plaintiff is permitted to amend the plaint as proposed in the I.A.

(On my dictation typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 6th Day of September 2021.)

(UNDI MANJULA SHIVAPPA)
Senior Civil Judge,
Gubbi.