

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT MADHUGIRI**

Dated this the 28th day of September 2021

: PRESENT :

SMT. HAVALADA SOWMYASHRI

B.A. L.L.M.,

Prl. Civil Judge & JMFC,
Madhugiri.

O.S. No.81/2013

Plaintiff : Inamath Sab @ Inamathulla Sab @
Syed Inayath @ Inayath Sab @ Syed
Inayath Sab S/o late Noorudin Sab
@ Syed Noorulla Sab @ Mohinuddin Sab
aged about 62 years,
R/o Gottukurike village,
Rolla Mandal, Madakasira Taluk,
Ananthapur District (A.P.)

(By Sri K.S.H., Advocate)

Vs/-

Defendants : 1) Syed Gafoor Sab @ Gafoor Sab
S/o late Nooruddin Sab @
Syed Noorulla Sab @ Mohinuddin Sab
aged about 57 years
2) Basha Sab
S/o late Nooruddin Sab @
Syed Noorulla Sab @ Mohandis Sab
aged about 50 years

3) Syed Babu Sab @ Babu Sab
S/o late Nooruddin Sab @
Syed Noorulla Sab @ Mohinuddin Sab
aged about 45 years
All are R/o Gottukurike village,
Rolla Mandal, Madakasira Taluk,
Ananthapur District (A.P.)

(Defendant No.1 By Sri LBR, Advocate)
(Defendant No.2 & 3 By Sri HVM, Advocate)

I.A.No.XI

Applicants : Syed Gafoor1st Defendant

Vs/-

Opponent : Inayathsab Plaintiff

* * *

ORDERS ON I.A.No.XI FILED BY DEFENDANT NO.1
UNDER ORDER 6 RULE 17 OF C.P.C

The defendant No.1 filed the present application praying this court to permit him to amend the written statement as sought for.

2. The proposed amendment sought is:

In the written statement, after the para 9, the following is to be added.

“9(a): It is submitted that father of the plaintiff and defendants by name Syed Noorulla Sab was sold the land bearing Sy.No.129/1, measuring 1-00 acre out of 7-30 guntas, bounded by east-north-south: land of Syed

Noorulla Sab (father of plaintiff and defendants), west: Govt. Halla, in favour of one Abdul Wajid Sab S/o Abdul Khuddus Sab of Madhugiri Town, under a Regd. Sale Deed dated, 12-12-1972 for a valuable consideration. Again the said Abdul Wajid Sab S/o Abdul Khuddus Sab has sold the same in favour of one Sameeulla Sab S/o Abdul Khushid Sab under a Regd. Sale Deed dated, 15-02-1978 for a valuable consideration. Again the said Sameeulla Sab S/o Abdul Khushid Sab in turn sold said extent of 1-00 acre in the same suit schedule survey number in favour of 1st defendant under a Regd. Sale Deed dated, 25-07-1978 for a valuable consideration of Rs.1000/- and delivered the possession of the same to the 1st defendant. Ever-since the date of said sale, the 1st defendant was and is in possession and enjoyment of the above said 1-00 acre land, mutation and katha and pahani also made out in the name of 1st defendant and raising crops by spending huge amount and hard labour. Thus the said property is the self acquired property of the 1st defendant and is in exclusive possession and enjoyment of the same. The plaintiff and other defendants 2 and 3 have no manner of right, title, interest, muchless possession over said an extent of 1.00 acre.”

3. In the affidavit annexed to the application, defendant No.1 stated that the plaintiff has filed the suit against him and other defendants for partition and separate possession in respect of the suit schedule properties. At the time of filing written statement, sale deeds are not traced out and as such he could not instruct his advocate to plead the aforesaid averments. After tracing over the said sale deeds, he instructed his advocate to plead the same. It is not intentional and is for bonafide a reason. The proposed amendment will not alter the nature of the case nor cause of action and same is very much necessary for proper adjudication of the case and amongst these grounds, prayed to allow the application.

4. On the contrary, counsel for plaintiff filed objection stating that the plaintiff is not within the knowledge of Registered Sale Deed dated 12-12-1972, 15-02-1978 and 25-07-1978. The defendant No.1 has created the story and documents suppressing the real facts and filed false application to amend the written statement. The land bearing Sy.No.129/1A measuring 7 acre 31 gunta including kharab land originally belonged father of plaintiff. After his demise, the plaintiff and defendants continued joint possession and

enjoyment of the suit schedule property. The katha and pahani jointly stands in the name of plaintiff and defendants and also in the name of Syed Mutteri Sab to an extent of 1 acre 20 gunta but he is stranger having no right, title and interest over the said property. The revenue authorities have wrongly mutated katha in his name to an extent of 1 acre 20 gunta vide MR No.37/1986-87, mere change of katha and pahani does not give any right, title or possession to Syed Mutteri. The present katha and pahani for an extent of 1 acre stands in the name of defendant No.1. The katha in respect of 6 acre 9 gunta jointly stands in the name of plaintiff and defendants. The said survey number property totally measuring 7 acre 31 guntas including kharab land 2 guntas is in joint possession and enjoyment of the plaintiff and defendants, hence plaintiff is having share and right over the suit schedule property but now the defendant No.1 created story and documents and filed false application for amending the written statement. Hence he prayed to reject the application.

5. Perused the records placed before the court.

6. The points that arise for my consideration are as under :

1. Whether defendant No.1 has made out sufficient grounds to allow the application ?

2. What order ?

7. My findings to the above points are as under :

Point No.1..... In the Affirmative,

Point No.2..... As per the final order

for the following :

REASONS

8. **POINT No.1** : Admittedly, the plaintiff filed the suit against Defendant No.1 to 3 for Partition and Separate Possession of his 1/4th in the suit schedule property i.e., land bearing Sy.No.129/1A measuring 7 acre 31 guntas including kharab land of 2 guntas situated at Reddihalli, Medigeshi hobli, Madhugiri taluk containing the stone revetted well fitted with I.P.Set, 14 Mango trees, one tamarind tree and other valuable trees.

9. The written statement averments show that the defendant No.1 has pleaded that the original propositus Nooruddin Sab i.e., father of plaintiff and defendants, during his lifetime sold 1 acre of land in

favour of Abdul Wajid Sab S/o Abdul Kuddus Sab under a Registered Sale Deed dated 12-12-1972 and thereby the land remaining is only 6 Acres 31 guntas including 2 guntas of kharab land. Plaintiff and Defendant got divided the said 6 Acre 31 guntas after the death of their father. Thereafter, this defendant sold 30 guntas to one Kadappa vide registered Sale Deed dated 28.05.1977. On 14.10.1982, plaintiff alongiwth Kadappa sold 60 guntas to Syed Saab vide registered Sale Deed. Thereafter, said Syed Sab re-conveyed 60 guntas in favour of plaintiff and defendant No.1 vide registered Sale Deed dated 15.07.1997. The defendant No.1 denied about total extent of land mentioned in suit schedule property, also denied joint possession and enjoyment over property. As per the proposed amendment, the defendant No.1 is stating that the Abdul Wajid Sab, to whom his father sold one acre out of 7 acre 31 guntas, sold the same in favour of Sameeulla Sab S/o Abdul Khushid Sab under a Regd. Sale Deed dated, 15-02-1978 for a valuable consideration. Again the said Sameeulla Sab S/o Abdul Khushid Sab in turn sold said extent of 1-00 acre in the same suit schedule survey number in favour of 1st defendant under a Regd. Sale Deed dated, 25-07-1978 for a valuable consideration of Rs.1000/- and delivered

the possession of the same to the 1st defendant. Ever-since the date of said sale, the 1st defendant was and is in possession and enjoyment of the above said 1-00 acre land, mutation and katha and pahani also made out in the name of 1st defendant and raising crops by spending huge amount and hard labour. Thus the said property is the self acquired property of the 1st defendant and is in exclusive possession and enjoyment of the same. The plaintiff and other defendants 2 and 3 have no manner of right, title, interest, muchless possession over said an extent of 1.00 acre.

10. As already noted above the plaintiff claims the suit schedule property in total 7 Acre 31 guntas is ancestral joint family property and as such he sought for 1/4th share in the suit schedule property. As per the defendant, the total extent of suit property is not correct, after his father sold one acre out of 7 Acre 31 guntas, the land remaining is only 6 Acre 31 guntas and as per amendment sought for by the defendant No.1, one acre of land out of suit schedule property which his father sold to third person, lateron he himself purchased the same and it is his self acquired property. Defendant No.1 has filed affidavit in support

of the application explaining that as he could not trace out the documents in support of his pleadings, he could not instruct his pleader to plead these averments in his written statement. The main objection of the plaintiff is that it is a created story, documents are created by the defendant No.1 and defendant No.1 has filed the present application after lapse of 5 years from the date of filing written statement.

11. For the sake of convenience, provision of Order VI Rule 17 is reproduced herewith:

17. Amendment of pleadings.—The court may at any stage of the proceedings allow either party to alter or amend his pleading 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.”

12. The Hon’ble Apex Court in ***Abdul Rehman Vs Mohd. Ruldu reported in (2012) 9 SCALE 582***, held that “If

application for amendment of plaint is filed after commencement of trial it has to be shown that in spite of due diligence, it could not have been sought earlier, the court should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side”.

13. In view of the aforesaid, it can be said that the amendment of pleadings cannot be claimed by the party as a matter of right nor can be denied by the Court arbitrarily. However, the discretion to be exercised by the Court is guided by the principles mentioned and depends on the facts and circumstances of each case. As such Or. 6 R. 17 is intended for promoting the ends of justice and not for defeating them, therefore grant of amendments is the rule and refusal is the exception.

14. Hon'ble Supreme Court in the case of ***Usha Balashaheb Swami and Ors. v. Kiran Appaso Swami and Ors (AIR 2006 SC 1663)*** has held that “A prayer for amendment of the plaint and a prayer for

amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement.”

15. At this stage it is important to discuss about the 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.

16. It is well settled law that criteria to decide the application for amendment of pleadings are subject to certain conditions namely: 1. When the nature of suit 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.

17. The Hon'ble Supreme Court in **REVAJEETU BUILDERS AND DEVELOPERS V/S NAGARAJ SWAMY and OTHERS - (2009) 10 SCC 84** has laid down the principles regarding consideration of amendment application as under:

“ 6. On critically analysing both the English and Indian cases. 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 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.”

18. 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.

19. Adverting to the facts of the present case, the defendant No.1 is stating about how his father sold 1 Acre out of 7 Acre 31 guntas to some third person and how he purchased the said one acre vide registered Sale Deed meaning thereby said one acre is his self acquired property and revenue documents stands in his name. This is nothing but explanation or rider to the contentions raised by him in the Written Statement

that the total extent mentioned in the plaint is not correct and the suit schedule property is not joint family property. While allowing this application, the nature of the suit 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 written statement. Hence, viewed from this angle, defendant No.1 has made out grounds for allowing the present application. It is also true that, the present application is filed after commencement of trial i.e. at the time of cross examination of PW1. If the amendment is allowed, it is open for the plaintiff to cross examine the defendant No.1 in respect of amendment of written statement. Any sort of inconvenience caused to plaintiff can be compensated by way of imposing reasonable costs. With these observations, I answer the point No.1 in the Affirmative.

20. **POINT No.2** : For the reasonings and findings given to point No.1, I proceed to pass the following :

ORDER

I.A.No.XI filed by defendant
No.1 under Order 6 Rule 17 of CPC
is hereby allowed.

Defendant No.1 is hereby directed to amend the written statement within 14 days from the date of order.

(Dictated to the stenographer directly on the computer, then corrected, signed and pronounced in the open court on this **28th day of September 2021**)

Sd/-
(H. Sowmyashri)
Prl. Civil Judge & JMFC,
Madhugiri.