

KATK810010592012



IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT SIRA

Dated this the 13th day of April 2022

PRESEN : Smt. ASHA K.S.
B.A. L., LL.B.,
Prl. Civil Judge & JMFC., Sira

O.S. NO. 155/2012

PLAINTIFF : Sriramaiah

/Vs/

DEFENDANTS : Nagarathnamma & others

In I.A. No.12

APPLICANT : Nagarathnamma

.....Defendant No.1

/Vs/

OPPONENT : Sriramaiah



ORDERS ON I.A. No.12

The Applicant/Defendant No.1 has filed an application U/Or. VI Rule 17 CPC seeking permission to amend the written statement.

2. The applicant has contended that, the plaintiff has filed suit for permanent injunction against him and other defendants. After contest, suit has been dismissed and preferred an appeal before the Senior Civil Judge, at Sira in R.A. No. 38/2014. In the said appeal, he filed application U/Or. VI Rule 17 opf CPC to amend the prayer portion . After allowing of application, he amended the plaint and sought for relief of declaration.

3. It is further stated that, defendants No.3 to 4 and plaintiff have colluded with each other and trying to knock off the written statement schedule property. Hence, it is



necessary to amend the written statement by way of seeking counter claim. Hence,prays to allow the application.

4. The plaintiff has filed objection and contended that, the revenue documents in respect of schedule property and revenue documents in respect of written statement property are entirely different. The defendants colluded with each other. They have created sale agreement. The application is not maintainable. There is an inordinate delay in filing of application. Hence, prays to dismiss the application.

5. Heard and perused the record.

6. The following points that would arise for my consideration:

1. Whether the Applicant/ Defendant No.1 has made out grounds to allow the application?



2. What order?

7. My findings on the above points are as under;

Point No.1 : In the **Negative**,

Point No.2 : **As per final order**

for the following;

REASONS

8. **Point No.1:** The plaintiff has filed this suit against the defendants for the relief of declaration and permanent injunction. After remand, the applicant has filed this application seeking permission to file counter claim by way of amendment.

9. In the affidavit, it is stated that the plaintiff and defendants No.3 to 5 colluded with each other and filed this



false suit only to knock off the written statement schedule property.

10. On perusal of written statement of defendant No.1, it is noticed that, there is no written statement schedule property in his written statement. After remand also, he has not filed additional written statement. It is true that, initially, the suit of the plaintiff dismissed on 19.11.2014. Thereafter, the plaintiff has preferred an appeal before the Senior Civil Judge, at Sira and there he filed application U/Or. VI Rule 17 of CPC to amend the plaint. The Hon'ble Appellate court allowed the said application and permitted the plaintiff to amend the prayer for the relief of declaration and remanded the said suit for fresh consideration. As per direction of appellate court, the plaintiff has carried out the amendment and filed amended plaint. As per the order of Appellate court,



suit has been converted for the relief of declaration. Thereafter, defendant No.1 has not filed additional written statement.

11. Now the applicant is seeking permission to file counter claim by way of amendment. Amendment of pleadings covered under Or. VI Rule 17 of CPC and counter claim covered U/Or. VIII Rule 6(a) of CPC. In this case, the applicant/defendant No.1 is filing counter claim and not amending his written statement. As stated above, the amendment of written statement and filing of counter claim is not one and the same. The parties to the suit can amend their pleadings at any stage of suit which are relevant to adjudicate the matter.

12. The defendant can file counter claim U/Or. VIII Rule 6(a) of CPC- “A defendant in a suit may, in addition to his



right of pleading a set -off under Rule VI, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit, but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. Whether such counter claim is in the nature of a claim for damages or not.

Provided that, such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.”.

13. In this case, the plaintiff has carried out amendment and filed amended plaint on 19.02.2020 and matter is posted for additional written statement. Thereafter, many opportunities granted to defendants for filing additional written statement, but they have not filed additional written statement. On 10.08.2021, additional written statement of defendants taken as not filed. It shows that 1 ½ year time granted to the defendants to file additional written statement.



As stated above, the time prescribed for filing written statement is 30 days from the date of service of summons and it can be extend upto 90 days and not beyond that time. In this case, after filing of amended plaint, 1 ½ year time granted to for filing of written statement, but they have not filed any additional written statement.

14. In the affidavit of this application, he has stated that, the plaintiff and defendants No.3 to 5 are trying to knock off the written statement schedule property. In the application or affidavit, he has no way stated about the cause of action for filing counter claim. As per Or. VIII Rule 6(A) of CPC, the defendant can file counter claim on the cause of action arise before filing of suit or after filing of suit. In this case, defendants No.1 has no where stated that, when cause of action arise for filing of counter claim. In this case, he had



filed written statement on 16.08.2012. This suit filed on 09.04.2012. It shows that after lapse of limitation, defendant No.1 is seeking permission to file counter claim. As stated above, he has not shown the cause of action for filing of counter claim and it is not covered U/Or. VI Rule 17 of CPC also. In fact, the applicant is not seeking permission to amendment, but he is filing counter claim. It amounts to introducing of new case. As discussed above, the applicant/defendant No.1 can file counter claim, but he has to show cause of action for that. Hence, the applicant has not made out grounds to allow the application. Accordingly, I answer this point in **Negative**.

15. Point No.2: In view of my findings on Point No.1, I proceed to pass the following;



ORDER

I.A. No. 12 filed by the
Applicant/Defendant No.1 U/Or. VI Rule 17 of
CPC is hereby rejected.

(Dictated to the Stenographer on computer, computerized and
printout taken by her, then corrected and pronounced by me in the
open court on **13.04.2022**)

(ASHA K.S.)
Prl. Civil Judge & JMFC.,
Sira

KATK810010592012

11

O.S. No. 155/2012

