



IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & J.M.F.C-II
AT: KARWAR

PRESENT: *Sri. Shrinivas Patil*
L.L.M,
Prl.Civil Judge & J.M.F.C-II of Karwar

O.S.No.127/2014

Dated: 20th Day of March 2023.

Plaintiff : Sri. Suresh S/o. Late Ganty Gunagi
(By Sri.R.V.B .,Adv)

V/s

Defendant: 1. Smt. Ganga Kom Chipa Gunagi &
6 others

(By Sri.K.R.D., Adv Def No.1 to 5)
(By Sri.C.D.N., Adv Def No.6 & 7)

IA No.VI

Applicant: Sri. Suresh S/o. Late Ganty Gunagi
(By Sri.R.V.B .,Adv)

V/s

Opponent: 1. Smt. Ganga Kom Chipa Gunagi &
6 others

(By Sri.K.R.D., Adv Def No.1 to 5)
(By Sri.C.D.N., Adv Def No.6 & 7)

Order on I.A. NO. VI U/Order VI Rule 17 R/w 151 of CPC.

The application filed by the plaintiff for the proposed amendment of plaintiff seeking to carry out amendment at page 4 para 6 line 7 of the plaint “aged 21 years” as the same was a clerical mistake.

2. In the affidavit annexed to application it is stated that, plaintiff has filed a suit for declaration. While drafting the plaint at page 3 para 5 and at page 4 para 6 of the plaint it is wrongly typed as “that Ganty Gunagi died in the year 1984”. The same ought to have 1981. The year 1984 is wrongly mentioned as 1984 instead of 1981. The same is clerical mistake. The death certificate is produced along with the application which proves that fact of death. At page 4 para 6 of the plaint at line 7 it is stated that plaintiff was just aged 24 years at that time. The said age was calculated based upon the above mentioned year 1984 referred in the plaint and the age 24 years referred in the very next line of the plaint are connected to each other.

That the age was mentioned with reference to the second year 1984 stated in the plaint. The same was shown based upon the calculation made at that time. Hence, prays to allow the application.

3. On the other hand, the defendants have filed their objection and stated in the objection that the application is not maintainable either in law or facts. The fact pleaded in the plaint is not the clerical mistake and not a simple typographical error. Plaintiff is not the son of paternal uncle of defendant No. 2 to 5 as their paternal uncle was unmarried till his death. As far as her mother is concerned, criminal Misc No. 309/2014 was filed to create new birth certificate and the said petition was dismissed. During the cross examination of plaintiff, he has admitted that his date of birth is 13/07/1990. Therefore, it amounts to admission and the same cannot be withdrawn. A person cannot approbate and reprobate at the same time. On all these grounds prays to dismiss the application.

4. Heard the arguments of both sides the following points that arise for my consideration:

:: POINTS ::

1. *Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?*

2. *What order?*

5. My answer to the above points:

Point No.1 : **Affirmative**

Point No.2 : As per final order

:: REASONS ::

6. **Point No.1:** The plaintiff has filed this present suit for their relief of declaration. .

7. I have already narrated the facts stated in the affidavit annexed to the application and objections filed by the defendants. The learned counsel for plaintiff vehemently argued that, he is having very good case on

merit and the proposed amendment sought for bonafide reasons. The application is filed before the commencement of evidence hence, the application can be allowed and by allowing the application the nature of the suit and cause of action will not change.

8. Per contra, the counsel for plaintiff vehemently argued the application has been filed with mala fide intention. When the contents of the plaint is perused it amounts to admission and admission cannot be withdrawn by way of amendment. In support of his claim he has relied on AIR 1998 SCC 618, ILR 2003 KAR 4814, 2009 AIR SCW 6644, ILR 2010 KAR 4522. All the said decisions relate to admissions cannot be withdrawn by way of amendment..

9. *In Chandar Kanta Bansal V/s Rajinder Singh Anand reported in (2008) 5 Supreme Court Cases 117* held that, the proviso to order 6 rule 17 of CPC 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 liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceeding should be avoided, that amendments which do not totally alter the character of an 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.

10. Plaintiff by way of amendment in this case has sought to amend the date of death of Ganty Gunagi as 1984 and his age as 21 years. Now, let us see it the statements made by the plaintiff in the plaint amounts to admission. In support of the defense set up by the defendants, the counsel has relied on the cross examination of plaintiff in Crl. Misc No. 309/2014. When the same is perused, he deposes that his father died in the

year 1981. According to him, his date of birth is 13/07/1960. He admits that his age was 24 years in the year 1984. Now, whether Ganty Gunagi is a father of plaintiff or did he die as bachelor is a matter of trial. The same is clearly out of the ambit of the said application. When the cross examination of plaintiff in Crl. Misc No. 309/2014 is perused, he deposes clearly that Ganty Gunagi died in the year 1981. As per the death certificate of Ganty Gunagi, his date of death is 15/05/1981. The date of death certificate of Ganty Gunagi is in accordance with the statement given by the plaintiff in Crl. Misc. No. 309/2014. When the death certificate of Ganty Gunagi is available on record which states his date of death as 15/05/1981, much importance must be given to the same as it is a documentary evidence. It must be kept in mind that a man may lie but a document will never lie. Page 4 para 6 of the plaint states that "late Ganty Gunagi died in the year 1984. At the time of his death , this plaintiff was just 24 years...". When the date of death of Ganty Gunagi is

mentioned as 1984, the age of the plaintiff as on the date of death will be 24 years as the date of birth of plaintiff is 13/07/1960. From the documents placed, it is quite clear that the date of death of Ganty Gunagi is 15/05/1981 and the date of death mentioned in the plaint is purely a clerical and typographical error. The statements made in the plaint do not amount to admission.

The application is filed even before the commencement of the plaintiff evidence. Hence, I believe that the application can be allowed. Therefore, **I answer point No. 1 in affirmative.**

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

:ORDER:

*The application filed by Plaintiff U/
Order 6 Rule 17 R/w Sec.151 of CPC., is
hereby allowed.*

No order as to cost.

***Plaintiff to carry out amendment as
sought for and to furnish amended
plaint.***

[Typed by me on laptop, signed by me and then pronounced the order in the open court on this 20th Day March-2023].

