

KAUK030017312018



ORDERS ON APPLICATION U/O. VI RULE 17
R/W SECTION 151 OF C.P.C.

1. The plaintiff has filed an application U/O. VI Rule 17 R/W Section 151 of C.P.C. seeking the leave of this Court to amend the plaint and prayer portion as stated in his application.

2. In the accompanying affidavit it is stated that, plaintiff No.1(a) to 5(a), defendants No.2 to 4 and 9 to 12 are the family members of late Soiru S/o. Rama Bhandari @ Kalgutkar. That defendants No.9 to 12 have been made as defendants as their signatures could not be obtained at the time of institution of this suit. However, they have also got 1/9th share each in the suit schedule properties in respect of half portion. Now the

plaintiff intends to bring amendment to para No.24 of the plaint and para A and B of prayer portion by adding the words “**defendant No.9 to 12**” after the words “in favour of the plaintiffs.” The same was not mentioned in the plaint due to oversight. That the share of defendant No.9 to 12 is shown in the plaint but the same was not shown in prayer portion due to oversight. The said mistake is not intentional one. Hence, he prays to allow the instant application.

3. On the other hand, counsel for defendants has not filed any objections to the same.

4. Heard both the sides. Perused the materials available on record.

5. In view of the same, the following points arise for my consideration.

(1) Whether the plaintiff has made out grounds for allowing said I.A. and thereby permitting him to carry out the proposed amendment in the plaint as sought for?

(2) What Order?

6. My answer to the above points are as follows.

Point No.1: In the Affirmative

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

REASONS

7. Point No.1: The plaintiff has filed the instant application seeking the leave of this Court to amend the para No.24 and prayer portion of the plaint by inserting “**and defendant No.9 to 12**” after the words “in favour of the plaintiffs.” The amendment sought would not change the nature of the suit and cause of action. However, respective

counsel for defendants have not filed objections resisting the same. Moreover, instant application has been filed before the commencement of trial.

8. The purpose and object of the rules of pleadings is to decide the real controversy between the parties and not to punish them for their mistakes, negligence or shortcomings. The plaintiff has specifically stated in his affidavit that due to inadvertence the the same has not been mentioned in the plaint. It appears to be bonafide mistake. On the other hand, no prejudice would be caused to the other side as the defendant gets the opportunity to prove his case by adducing evidence on his behalf. The defendants can also very well cross-examine the plaintiff.

9. Provisions relating to amendment of pleadings must be liberally construed with a view to promote the ends of justice and not to defeat them. Rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court. The court should not go into correctness or falsity of the case in the amendment, while dealing with the application for amendment. The **Hon'ble Supreme Court in Revajeetu Builders and Developers vs Narayanaswamy & Sons reported in (2009)10 SCC 84** formulated some basic principles which shall be taken into consideration while allowing or rejecting the application for amendment. Some of them are,

1. Whether the application for amendment is bona fide or malafide?

2. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.

3. Refusing amendment would in fact lead to injustice or lead to multiple litigation.

10. The Hon'ble Apex Court in B.K. Narayana Pillai v. Parameshwaran Pillai and Anr. reported in (2000) 1 SCC 712 observed that

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the

costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

11. This Court is of the opinion that the amendment sought to be carried out do not change the nature and cause of action if allowed. For the aforesaid reasons and dictums, I answer point No.1 in **the Affirmative.**

12. Point No.2: In view of answering the point No.1 in the Affirmative, this Court proceeds to pass the following.

ORDER

The application filed by the counsel for plaintiff U/o. VI Rule 17 R/W Section 151 of C.P.C. is hereby allowed.

No order as to costs.

Addl. Civil & JMFC, Karwar.