

KAUK210005232023



IN THE COURT OF THE ADDL. CIVIL JUDGE, ANKOLA

PRESENT

Smt. Arpitha B Bellad.

B.Com., LL.B.,
Addl., Civil Judge and J.M.F.C.,
Ankola.

CIVIL CASE NO.35/2023

Dated this the 03rd day of October 2023

Plaintiff:-

1. Sri. Sudhakar Palgun Naik,
Age:38 years, O/c.Agriculturist,
R/o. Nadibag, Tq. Ankola. U.K.
2. Smt. Geeta Gajanan Naik
D/o. Palgun Naik,
Age:46 years, O/c.Agriculturist,
R/o. Vajralli, Tq. Ankola. U.K.
3. Smt. Neela Purandar Naik
D/o. Palgun Naik,
Age:39 years, O/c.Agriculturist,
R/o. Vajralli, Tq. Ankola. U.K.

[By Sri. A.N.T. Advocate]

V/s

Defendants:-

- 1.U.F.M. Smt. Usha Pandurang

Naik,

Age:54 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

2.U.F.M. Jyothi Ramesh Naik,
Age:48 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

3. Smt. Kavita Keshav Naik,
Age:42 years, O/c.Agriculturist,
R/o: Near Civil Hospital Karwar. Tq.
Ankola.

4. Sri. Santosh Ira Naik,
Age:35 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

5. Smt. Jayashree Shanta Naik,
Age:47 years, O/c.Agriculturist,
R/o: Kanasagiri, Tq. Ankola.

6. Smt. Kusuma Umakant Naik,
Age:54 years, O/c.Agriculturist,
R/o: Keni, Tq. Ankola.

7. Sri. Shrikant Thaku Naik,
Age:58 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

8. Sri. Purandar Thaku Naik,
Age:47 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

9. Smt. Mangala Subramanya Naik,
Age:47 years, O/c.Agriculturist,
R/o: Kantri, Tq. Ankola.

10. Smt. Preeti Prabhat Naik,
Age:49 years, O/c.Agriculturist,
R/o: Nadibag, Tq. Ankola.

11. Smt. Kamala Prabhakar Naik,
Age:55 years, O/c.Agriculturist,
R/o: Aversa, Tq. Ankola.

12. Smt. Nirmala Maruti Naik,
Age:48 years, O/c.Agriculturist,
R/o: Hattikeri Tq. Ankola.

13. Smt. Saroja Naik,
Age:48 years, O/c.Agriculturist,
R/o: Hattikeri, Tq. Ankola.

14. Smt. Veena Venkatesh Naik,
Age:42 years, O/c.Agriculturist,
R/o: Gunda, Tq. Kumta

15. Smt.Vinaya Vishnu Naik,
Age:46 years, O/c.Agriculturist,
R/o: Binaga, Tq. Karwar

16. Sri. Shrikant Chudiyā Naik,
Age:60 years, O/c.Agriculturist,
R/o: Bobruwada, Tq. Ankola.

(By Sri. P.P.G.-Adv. For D.1,2,4,5,6,
& 11 to 14)

(By Sri. V.S.N.-Adv. For D.7 to 9)

(By Sri. G.N.N.-Adv. For D.16)

ORDERS ON I.A.No.IV

The Defendant No.16 has filed an IA No. IV under **Order VI Rule 17** at an initial stage of the case, praying to permit him to amend some of the words in the written statement mentioned in the said application .

2. It is stated in an accompanying affidavit sworn by the defendant No.16 that the plaintiffs have filed a suit for partition in which he is added as a necessary party and he has purchased the suit property measuring an area of 0-10-04 in which he has been in possession and cultivation by constructing the house and well and this defendant had filed a written statement which requires amendment of some words and if the said application is not allowed, he will be put into hardship which cannot be compensated interms of money. Hence prays to allow the said application.

3. In spite of giving sufficient opportunities, the plaintiffs have failed to file their objections to the said application, hence objections by plaintiffs was taken as not filed.

4. Heard the Counsel for the Defendant No.16 on the said application and perused entire materials on record.

The following points that arise for my consideration are:

1) Whether the Defendant No.16 is entitled to amend the written statement as sought for under IA No IV ?

2) What order?

5. My findings on the above points are as under:

Point No.1 : In the affirmative;

Point No.2 : As per final order for

the following :

REASONS

6. **Point No.1:-**The present suit is filed by the plaintiffs for relief of partition and separate possession of suit schedule properties. The defendant No.16 is added as a party since his name is appearing in the mutation entry after which the defendant No.16 appeared before the Court and filed the written statement along with a counter claim seeking a relief of adverse possession in respect of the suit property against the plaintiffs and now the

defendant no.16 intends to amend some words of the written statement.

7. Amendment of the pleadings can be made at any stage of the suit provided that such amendment shall neither change the nature of the suit nor cause of action. However, an application for amendment before the commencement of trial shall be liberally construed which does not affect the interest of the other party.

8. In order to have a complete study of the provision of Law, the same is reiterated as under for the sake of convenience:

Order VI Rule 17 of CPC:

(“17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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”.)

9. It is well settled law that ground of application for amendment be subject to certain conditions namely:

- i) When the nature of it change by permitting amendment;
- ii) When amendment would result in introducing new cause of action and intending to prejudice other party;
- iii) When allowing amendment application, defeats law of limitation.

Now we have to consider whether the present application for amendment of the plaint meets these requirements.

10. On careful perusal of an entire materials on record, it appears to the Court that the proposed amendment which the defendant No.16 has sought for mere clerical/typographical errors/mistakes which can be corrected or amended at any stage of the suit. He intends to amend some words in his pleadings which cannot be said to have prejudice the plaintiffs. The Court shall be liberal in allowing an application for

amendment in cases of clerical/typographical errors since the same will not amount to the change of nature of the suit.

3. It has been held in a recent decision of the Hon'ble Supreme Court of India reported in **2012 SAR (CIVIL) 342 (Rameshkumar Agarwal V/s Rajmala Exports P.Ltd & Others)**, which reads thus:

“ It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

11. In the wake of principles emerging from the above decision, I am of the considered opinion that by virtue of the proposed amendment, the proposed amendment neither changes the original controversy between the parties, nor it changes the complexity of the case, nor it will change or introduce a new cause of action or case. So also it will not cause any prejudice to the defendants. It is also the cardinal principle of law that, it is

not at this stage to go into the correctness or falsity of the case as well as the court cannot record any findings on the merits or demerits of the proposed amendment.

12. It is also to be noted that in the present case on hand, issues have not yet been framed and the trial has not yet commenced as such it does not affect the interest of the plaintiffs. If the amendment sought is only with respect to the correction of pleadings in the plaint, and is predicated on facts which are already pleaded in the plaint, then there is no impediment for the Court to allow the same. Considering all these aspects of the matter, this Court is of the opinion that, the defendant No.16 has made out a case to allow the application for amendment. Accordingly, point No.1 is answered **in the Affirmative.**

13. Point No.2: For the forgoing reasons, this Court proceeds to pass the following:

ORDER

**I.A.No.IV filed by the Defendant
No.16 under Order-VI Rule-17 r/w**

Sec. 151 of the CPC., is hereby allowed.

In the consequences the defendant no.16 is hereby permitted to carry out the amendment to the written statement and file amended written statement.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the open court on this the 03rd day of October 2023)

Addl., Civil Judge, Ankola

**(Order Pronounced by in the open
court vide separate order)**

ORDER

**I.A.No.IV filed by the Defendant
No.16 under Order-VI Rule-17 r/w
Sec. 151 of the CPC., is hereby
allowed.**

**In the consequences the defendant
no.16 is hereby permitted to carry
out the amendment to the written
statement and file amended written
statement.**

Addl., Civil Judge, Ankola.