

IN THE COURT OF THE CIVIL JUDGE AND JMFC
ANKOLA

Dated this the 14th day of October 2019

PRESENT

Sri Rangaswamy J,
B.A.L., LL.M.,
Prl.Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.90/2015

PLAINTIFF : Sri Seetharama Murkundi Naik,
OPPONENT Aged about 60 years,
Agriculturist and business,
R/o Hanehalli,
Post: Bankikodla,
Taluk: Kumta.

(By Sri M.L.Naik, Advocate)

-Vs-

DEFENDANTS: 1. Sri Shantram Hegde,
APPLICANTS President, Management Committee,
K.D.C.C.Bank,
Main office, New Market Yard,
Sirsi – 581402.

2. Sri Sathish Ganesh Mavinakurve,
Managing Director,
K.D.C.C.Bank,
Main office, New Market Yard,
Sirsi- 581402.

3. Sri P.S.Abbimane,
Manager, K.D.C.C.Bank,
Bankikodla branch,
Bankikodla -581 319,
Uttara Kannada.

4. Sri Gurucharan Krishna Nadakarni,
Aged about 48 years,
R/o Post: Bankikodla -581 319,
Uttara Kannada.

(D1 to 3 – By Sri A.N.Talgeri, Advocate
D4 – By Sri N.S.Naik, Advocate)

ORDER ON I.A.NO.IV

The defendants have filed the application seeking the permission to amend the written statement.

2. Affidavit is filed in support of the application reveals that the written statement filed by the defendants denying the plaint averments. The defendant is required to raise some important points of law. Those points of law were not raised at the time of filing of written statement by oversight. Therefore, by way of this amendment, the defendants would like to incorporate those contentions.

3. Objections filed contending that application filed is at belated stage. Section 70 of Karnataka Co-Operative Societies Act has no application to the case on hand. The amendment application will change the nature of the case and introduces new facts. Hence, sought for dismissal.

4. Heard.

5. Point for consideration:

1. Whether the application filed by the defendants deserve to be allowed?

2. What order?

6. My findings on the above points for consideration are as under:

Point No.1 : In the affirmative.

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

REASONS

7. **POINT NO.1** :- The defendants have filed the application seeking amendment of written statement to incorporate certain defences in the written statement. By way of amendment, the defendants would like to incorporate in the written statement is that the suit properties more value is more than Rs.5,00,000/- and this court has no pecuniary jurisdiction. Under Section 70 of Karnataka Co-Operatives Act, this court has no jurisdiction to try this suit and an issue relating to pecuniary jurisdiction and maintainability of the suit has to be framed.

8. The plaintiff has filed this suit seeking the relief of mandatory injunction to the defendant No.3 to shift the branch office of the bank to the proposed building of the plaintiff from the place of the 4th defendant. The plaintiff has pleaded that the plaintiff had purchased the property bearing Sy.No.192/A2/1+2A3 in the year 1994 wherein the plaintiff has constructed 3 shops in the said property.

The defendant No.1 to 3 approached the plaintiff and requested him to let his building to shift the branch office of the bank and for the said purpose the plaintiff had spent huge amount of mone for construction of structure. But, the defendants No.1 to 3 have shifted the branch office to the building of 4th defendant.

9. The defence sought to be raised by the defendants by way of amendment is that the suit is not maintainable under Section 70 of Co-Operative Societies Act and also regarding the pecuniary jurisdiction of the court. So far as amendment of the written statement is concerned, the learned counsel for the defendant has relied upon the following decisions.

1. 2015(5) KCCR 707 (H.Note B)
2. 2018(5) KCCR SN 101

Perused those decisions.

10. In the instant case, evidence not yet been commenced. The proposed amendment is essential for effective adjudication of the case. The proposed amendment is relating to pecuniary jurisdiction and jurisdiction over the subject matter which are essential to be considered for effective adjudication of the case. Therefore, I answer point No.1 in the affirmative.

11. **POINT NO.2**:- In view of the discussion made herein above, I proceed to pass the following:

ORDER

The I.A. No.4 filed by the defendants under Order 6 Rule 17 CPC is hereby allowed.

For amendment and amended written statement.

Call on 8.11.2019.

(Dictated to the Stenographer directly on computer, transcribed and typed by her, the same is corrected and then pronounced by me in the open court on this the 14th day of October 2019.)

(Rangaswamy J)
Prl. Civil Judge and JMFC,
Ankola.