

KAUK210015122022



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.

ORIGINAL SUIT NO.95/2022

Dated this the 26th day of June, 2024

Plaintiff:-

1. Smt. Prema Honnappa Nayak,
Aged about 63 years,
O/c: Household,
R/o:Hoskeri, Tq. Ankola
2. Smt.Shobha Pramod Nayak,
Aged about 54 years,
O/c: Household,
R/o:Adluru, Tq. Ankola
3. Smt. Rajamma Umesh Nayak,
Aged about 51 years,
O/c: Teacher,
R/o:Shedgeri, Tq. Ankola

[By Sri. R.N.H., Advocate]

V/s

Defendant:-

1. Sri. Devanna Subraya Nayak,
Aged about 59 years,
O/c: Agriculturist
R/o:Belikeri, Tq. Ankola

2. Sri. Narayan @ Ramachandra
Nayak,
Aged about 60 years,
O/c: Agriculturist
R/o:Belikeri, Tq. Ankola

[G.T.N. for Defendant No. 1]
[N.B.K. for Defendant No. 2]

i.	Provision under which the application is filed	O.VI. Rule 17 R/w Section 151 of CPC
ii.	Relief sought for	Amendment of plaint
iii.	The date on which the application is filed	21/03/2024
iv.	Number of the application	IA No.II
v.	The date on which the objections are filed by Defendants	04-04-2024
vi.	The date on which the orders were passed on the said application	26-06-2024

ORDERS ON I.A.No.II

The Plaintiff has filed an IA No. II accompanied with an affidavit under **Order VI Rule 17** at the stage of framing of

issues, praying to permit the Plaintiff to amend the suit plaint as stated in the said application.

The proposed amendment is as follows:

To delete the word “ defendant No.4 ” and in its place to substitute the word “ defendant No.1” in last line at para No.4 of the plaint. in all the places at Para No.1 to 5 of the plaint.

“To add the following after para No.7 and in prayer column -

“ವಾದಿಯ ಅಜ್ಜಿಯಾದ ಮೃತ್ತ ದೇವಮ್ಮ ಕೋಂ ದೇವಣ್ಣ ನಾಯಕ ಇವರು ದಿನಾಂಕ **12/06/1948** ರಂದು ಭಕ್ತಿಸು ಪತ್ರದ ದಿನಾಂಕ **30-03-2024** ರಂದು ತಿಮ್ಮಕ್ಕಾ ಬೊಮ್ಮಯ್ಯ ನಾಯಕ ಇವರಿಂದ ಭಕ್ತಿಸು ಪತ್ರ ದಾಖಲೆಯ ಮೂಲಕ ಮೂಲಗೇಣಿಯನ್ನು ಪಡೆದು ದಾವಾಸ್ತಿ ಸಿರಿಯಲ್ ನಂ.1 ಮತ್ತು 2 ಮತ್ತು ದಾವಾಸ್ತಿ ಸಿರಿಯಲ್ ನಂ.5 ಮ್ಯೂಟೇಶನ್ ನಂ. **2572** ದಾಖಲಾಗಿರುತ್ತದೆ. ದಾವಾಸ್ತಿ ಅನುಕ್ರಮ ನಂ.1 ರಲ್ಲಿ **1950** ರ ಪೂರ್ವದಲ್ಲಿ **18** ಪುಟ ವ್ಯಾಸವುಳ್ಳ **30** ಪುಟ ಆಳವಿರುವ ಬಾವಿಯಿದ್ದು. ಸದ್ರಿ ಭಾವಿಯನ್ನು ವಾದಿ ಪ್ರತಿವಾದಿ ನಂ.1 ರವರು ಈ ಹಿಂದಿನಿಂದಲೂ ಸಾಮೂಹಿಕವಾಗಿ ಬಳಸಿಕೊಂಡು ಬಂದಿದ್ದು ಇರುತ್ತದೆ. ಪ್ರತಿವಾದಿ ನಂ. 1 ರವರು ದಾವಾಸ್ತಿ ನಂ.1 ರಲ್ಲಿ ಇರುವ ಭಾವಿಯ ನೀರನ್ನು ಬಳಸಿಕೊಂಡು ದಾವಾಸ್ತಿಯ ಸಿರಿಯಲ್ ನಂ.1 ರಲ್ಲಿ ವಾಟರ ಸರ್ವಿಸಿಂಗ್ ವ್ಯವಹಾರವನ್ನು ಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತಾರೆ. ಸದ್ರಿ ವಾಟರ ಸರ್ವಿಸಿಂಗ್ ವ್ಯವಹಾರದಿಂದ ಪ್ರತಿವಾದಿ ನಂ:1 ರವರಿಗೆ ಕನಿಷ್ಠ ದಿನಕ್ಕೆ ರೂ.**5000/-** ಉತ್ಪನ್ನವಿರುತ್ತದೆ. ಅದರಂತೆ ಸದ್ರಿ ಭಾವಿಯ ನೀರನ್ನು ಪ್ರತಿವಾದಿ ನಂ.1 ರವರು ಬೇರೆ ಬೇರೆ ಕಡೆ ನೀರನ್ನು ಮಾರಟ ಮಾಡುತ್ತಿದ್ದು, ಪ್ರತಿ ದಿನಕ್ಕೆ **5** ರಿಂದ **6** ಟ್ಯಾಂಕರ ಲಾರಿಯು ತೆಗೆದುಕೊಂಡು ಹೋಗುತ್ತದೆ. ಪ್ರತಿ ಟ್ಯಾಂಕರ ಲಾರಿಯು ಪ್ರತಿದಿನ ರೂ.**3000/-** ನೀಡುತ್ತಿರುವ ಬಗ್ಗೆ ಈ ವಾದಿಯರಿಗೆ ಮಾಹಿತಿ ಇರುತ್ತದೆ.

ಪ್ರತಿವಾದಿ ನಂ.1 ರವರು ಟ್ಯಾಂಕರ ಲಾರಿಗೆ ನೀರನ್ನು ತುಂಬಿ ಕಳಿಸುವುದರಿಂದ ಕನಿಷ್ಠ ರೂ. **18,000/-** ಪ್ರತಿದಿನಕ್ಕೆ ಉತ್ಪನ್ನವಿರುತ್ತದೆ. ದಾವಾಸ್ತಿಯಲ್ಲಿರುವ ಭಾವಿಯು ವಾದಿ ಮತ್ತು ಪ್ರತಿವಾದಿ ನಂ.1 ರವರ ಸಾಮೂಹಿಕ ಹಕ್ಕಿನ ಭಾವಿಯಾಗಿರುವುದರಿಂದ ಸದ್ರಿ ಭಾವಿ ನೀರಿಟ್ಟಿಗೆ ಈ ವಾದಿಯರು ಹಕ್ಕುದಾರೆಂದು ನಿರ್ಣಯಿಸಲು ಬೇಡಿಕೆ ಇರುತ್ತದೆ.

ಪ್ರಾರ್ಥನಾ ಕಾಲದಲ್ಲಿ ಭಾವಿಯ ನೀರಿನಿಂದ ಬರುವ ಎಲ್ಲಾ ರೀತಿಯ ಉತ್ಪನ್ನವನ್ನು ವಾದಿಯರಿಗೆ ದಾವೆ ದಾಖಲಿಸಿದ ದಿನದಿಂದ ಭವಿಷ್ಯತ್ತಿನ ಪರಿಹಾರವಾಗಿ ಕೊಡಿಸಲು ಬೇಡಿಕೆ ಇರುತ್ತದೆ.

2. It is stated in an accompanying affidavit sworn in by the plaintiff No.1 that they had provided the details of the proposed amendment at the time of filing of the plaint but recently came to know regarding the non inclusion of the said facts. The proposed amendment is necessary for proper adjudication of the case. Hence, prays to allow the said application.

3. Per contra, objections came to be filed on behalf of the defendants by refuting the said application as not maintainable either in law or in facts by contending that the plaintiffs have not produced any documents in support of the proposed amendment in the plaint and it is an imaginary thing. If the said application is allowed, the entire nature of the case will be changed and the proposed amendment is not necessary to decide the case. On all these grounds, prays to dismiss the said application with costs.

4. Heard on both the sides and on perusal of the materials on record, the following points that arise for my consideration are:

1) Whether the Plaintiffs are entitled to amend the Suit Plaint as sought for under IA No II ?

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:- Inorder 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”.)

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

- i) When the nature of it must not change by permitting amendment;
- ii) When amendment would not result in introducing new cause of action and intending to prejudice other party;
- iii) When allowing amendment application, does not defeats law of limitation.

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

7. The instant suit has been filed by the plaintiffs seeking the relief of partition claiming 1/4th share in the suit schedule properties. The first amendment which the plaintiffs are sought to amend is to delete the word defendant No.4 and to substitute the word defendant No.1 in its place at para No.4 of the plaint. On

going through the plaint, there are only two defendants but it has been mentioned as defendant No.4 in the plaint which requires to be amended by substituting it for defendant No.1 as sought for by the plaintiffs. The said proposed amendment clearly appears to be a typo graphical mistake which can be amended at any stage of the suit and the same does not affect the interest of the defendants in any manner.

8. So far as the second proposed amendment is concerned, the plaintiffs intend to incorporate some facts in respect of the suit property regarding acquisition of the same as well as joint well which is in joint possession of the plaintiffs and defendants according to plaintiffs. They are claiming rights in the said well.

9. Admittedly, the present suit is filed for the relief of partition. In a suit for partition and separate possession, all the joint properties must be brought on record so as to determine the rights of the parties in the joint properties. The objection raised by the defendants is that plaintiffs have not produced any supportive document in regard of proposed amendment. But the said contention is a matter of a trial which shall be adjudicated during trial and not at the stage of deciding the application for amendment. The plaintiffs intend to incorporate some additional facts only which can be allowed at any stage of the suit and the same would not amount to change of nature of the suit.

10. 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 a considerable point that the present stage is for plaintiff evidence and he has not stepped into the witness box yet, as such even if the amendment application is allowed the defendants are having an opportunity to file their additional written statement to the amended portion of the suit plaint and they will be having an opportunity to cross examine the Plaintiff, during the course of the trial, on such amended portion of the suit Plaint. If the amendment application is rejected, it is having far reaching consequences, shutting the doors to the Plaintiff, leading to violation of principles of natural justice. It is necessary to allow the proposed amendment, in order to avoid the multiplicity of the proceedings. Considering all these aspects of the matter, I am of the opinion that, the Plaintiffs have 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.II filed by the Plaintiffs
under Order-VI Rule-17 r/w Sec.
151 of the CPC., is hereby allowed.**

**In the consequences the
Plaintiffs are hereby permitted to
carry out the amendment to the
Plaint and file amended Suit
Plaint.**

(Prepared and typed by myself, then corrected by me and printed through stenographer, then pronounced in the open court on this the 26th day of June- 2024)

**(Arpitha B Bellad)
Addl. Civil Judge, Ankola.**

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

ORDER

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

**In the consequences the Plaintiffs are
hereby permitted to carry out the
amendment to the Plaint and file amended
Suit Plaint.**

Addl. Civil Judge, Ankola.

