

07/07/2023

Case called

Pltf by. RRS

Def. by JDN/CMB

For Orders

ORDER ON I.A.NO.V FILED U/ORDER VI RULE 17
OF THE C.P.C. FILED BY THE DEFENDANT

The Plaintiff filed the suit for the relief of recovery of possession and injunction against the Defendant.

2. The nutshell of the Plaintiff's suit is that:-

The Plaintiff is the owner of the suit schedule property. He purchased the said property in a public auction. The Defendant is the younger brother of Sri. Shaniyar Govindappa Naik. The Defendant and his brother were the erstwhile owners of the suit schedule property. The Plaintiff submitted that, the elder brother of the Defendant has handed over his possession and the Defendant has not handed over the possession. The Plaintiff issued a legal notice to the Defendant calling upon him to vacate the suit schedule property on 01/02/2012. But the Defendant did not do so. The Defendant planned to construct toilet in the suit schedule property. The Plaintiff resisted the same. Whereas, the Defendant threatened the Plaintiff that he will continue with his plan. Henceforth, the Plaintiff filed this suit.

3. The suit summons was served upon the Defendant. He appeared before this court through his counsel and filed written statement denying the Plaintiff's averments and the Defendant prayed to dismiss the suit with cost.

4. In view of rival contentions, this court framed issues on 24/05/2022. Thereafter, on 14/09/2022,

the Defendant filed an application U/Order VI Rule 17 of the C.P.C., and the same was not pressed by the Defendant. Thereafter, on 25/11/2022, the Defendant filed this application. The Plaintiff filed objection on 05/12/2012.

5. Heard both the sides. The learned counsel for the Defendant submitted that, on 02/11/2022 he has produced certain documents by obtaining those documents from various office. Thereafter, he has filed this application. He submitted that, without those documents he cannot proceed with the suit. Henceforth, he was unable to plead the same in the written statement. There is no any malafide intention or the case of action nor the nature of the suit would change if the amendment is allowed. He relied upon the Judgment reported in 2023 AIR (Civil) 443. He submitted that, Hon'ble Supreme Court of India held that, all amendments of pleadings should be allowed liberally which are necessary for determining the real controversy in the suit. He further submitted that, in case if such amendment would not alter nor substitute a new case, then the amendment cannot be denied.

6. The learned counsel for the Plaintiff submitted that, the actual due diligence is not established by the

Defendant while praying for an amendment after framing of issues. He submitted that, the amendment would change the nature of the suit and also change cause of action. He relied upon the Judgment reported in (2012)2 SCC 300, whereas, he submitted that, the Hon'ble Supreme Court of India, has interrupted into the meaning and significance of the word due diligence. The word due diligence provides a test to determine the discretion of the courts in allowing the amendments. Henceforth, he prayed to dismiss this amendment. He relied upon another Judgment of the Hon'ble High Court of Karnataka and submitted that, the amendment cannot be allowed after the commencement of the trial. He further submitted that, the proviso to the U/Order VI Rule 17 of the C.P.C., makes it clear that, what are those tests to allow the amendment. In view of above arguments he prayed before this court to dismiss the application.

7. In view of reply, the learned counsel for the Defendant submitted that, there will be no impediment caused to the Plaintiff in case if the amendment is allowed. In order to determine the real controversy between the parties, the amendment is necessary. There will be no injury caused to the Plaintiff, if the amendment is allowed. He further submitted that, the

only cause for not pleading the amendment in the original written statement was for not obtaining those documents filed by him. Henceforth, he prayed to allow the application.

8. On perusal of materials available on record, following points arise for my consideration;

Point No.1 : Whether the Defendant has made out grounds to allow the amendment sought in application?

Point No.2 : What Order?

9. On perusal of materials available on record my answer to above points are as under;

Point No.1 : **In the Affirmative**

Point No.2 : **As per final Order,
for the following;**

REASONS

10. **Point No.1** : The Plaintiff filed the suit for the relief of recovery of possession and injunction from the Defendant. On perusal of the materials available on record, the Defendant has sought for an amendment of written statement. Wherein, the Defendant submitted that, the amendment sought by him is necessary to

determine the real controversy between the parties. The only reason for not pleading the same was the delay caused in obtaining those documents filed by him on 02/11/2022. In reply, the Plaintiff submitted that, the amendment sought by the Defendant could have pleaded earlier. Because the documents filed by the Defendant makes it very clear that, he was party to the execution proceedings before Hon'ble Civil Judge, Senior Division at Honnavar. In such circumstance, he would have not suppressed all those materials at the time of filling of the written statement.

11. On perusal of the materials it is understandable that, the nature of the suit and cause of action of the Plaintiff would not change. Because, the defence taken up by the Defendant is only with respect to his-say. It is to be noticed that, the question of limitation even if not pleaded it can be raised as an issue and it can be disposed off. However, the amendment sought by the Defendant had also pleaded with respect to the limitation.

12. It is to be noticed that, the trial has not yet commenced. Whereas, the court has framed issues on 24/05/2022. Whereas, the amendment sought by the Defendant by filling I.A No.3 which was not pressed,

for not attesting it was filed on 14/09/2022. Henceforth, it is understandable that, the amendment has been sought after the framing of issues only. On perusal of the documents filed by the Defendant, it is understandable that, those documents are certified documents and the Defendant is party the execution proceedings. In such circumstance, the submission of the Defendant cannot be ruled out. Thereby, the objection of due diligence raised by the Plaintiff can be sufficed by imposing cost.

13. On perusal of materials placed on record, it is quiet evident that, The court should interrupt and understand the meaning and significance of the word due diligence, in order to determine the real controversy between the parties. On perusal of materials available on record, I am of the opinion that, when nature of the suit and the cause of action of the Plaintiff is not affected, then, any amendment sought lawfully to determine the controversy can be allowed at any stage of the suit. In view of above discussion and relying upon the Judgment of Hon'ble Supreme Court of India placed by the learned counsel for the Defendant, I am of the opinion that, the amendment sought by the Defendant is necessary for determination of real controversy in the suit. Hence,

the proposed amendment can be allowed. In view of above discussion, I answer **Point No.1 Affirmatively.**

14. Point No.2 : In view of answering point No.1 Affirmatively, I proceed to pass following;

ORDER

The application filed by the Defendant is hereby allowed with cost of Rs.200/-.

The cost of Rs.200/- shall be paid to the Plaintiff by the Defendant.

Sd/-

Addl. Civil Judge and
J.M.F.C. Bhatkal.

The Defendant is here by directed to amend the written statement and file amended written Statement.

Call on by 20/07/2023.

Sd/-

Addl. Civil Judge and
J.M.F.C. Bhatkal.