

KAUK620009132017



**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,  
AT HONNAVAR.**

**-:PRESENT:-**

**SRI. IRANNA HUNASHIKATTI.,**  
B.COM., LL.B.  
Addl. Civil Judge & JMFC.,  
Honnavar.

**Original Suit No. 62/2017.**

**Dated this 13<sup>th</sup> day of February 2024.**

**Plaintiff :-** Sri. Venkataraman S/o Narayan Shetty.  
Aged about : 63 years,  
Occupation: Agriculture,  
R/o Balegadde, Post: Muguva,  
Honnavar Taluk (U.K.),

**V/s.**

**Defendant :-** Sri. Nagaraj S/o Mahabaleshwar Shetty.  
Aged about : 46 years,  
Occupation: Industrialist,  
R/o Bengre, Post: Ulamannu,  
Bhatkal Taluk (U.K.),

**IA No. X**

**Applicant/ :-** Sri. Venkataraman S/o Narayan Shetty.  
**Plaintiff**

**(By Sri. G.V.B., Advocate)**

**V/s**

**Opponent/ :-** Sri. Nagaraj S/o Mahabaleshwar Shetty.  
**Defendant**

**(By Sri. S.G.H., Advocate)**

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**ORDERS ON I.A. No.X.**

The applicant/plaintiff has filed IA No. X U/o 6 Rule 17 R/w section 151 of C.P.C.,for seeking permission of the Court to amend the plaint as sought in the application.

**2.** The said application filed by accompanying affidavit and stated that, he has filed this suit against the defendant for declaration & permanent injunction in respect of suit schedule property. It is further contended that by oversight and due to typing mistake, instead of showing the Sy. No. 463B of Hosakuli village, it was shown as Sy. No. 295/1 of Mugva village. The said mistake is clerical one. The proposed amendment is very much necessary for proper adjudication of the suit. Further it is contended that if this application is not allowed then he will be put great hardship and injustice. On the other hand, if the application is allowed then no prejudice will be caused other side. Hence, for these reasons, the plaintiff prayed to allow the application.

**3.** The defendant has filed objection by denying the contents of said application and further submits that this application filed by applicant/plaintiff is not maintainable either in law or on facts. The defendant denied the contents of the application and specifically contended that, he had filed O.S. No. 61/2017 against

the plaintiff of this suit. In that suit, applicant has filed written statement and mentioned as land survey number 295 instead of mentioning as Sy. No.463B. Therefore, only with an intention to harass this defendant, the present application is filed. Further contended that, the proposed amendment is nothing but introducing the entire the strange things in the suit. The proposed amendment is unnecessary and it will change the nature of suit.

4. Further submits that if the application is allowed the defendant would be put great hardship and injustice which cannot be compensated in terms of money. If the application is not allowed no harm will be caused other side. Hence, the application filed by the applicant to be dismissed with exemplary cost.

5. Heard on IA No. X by both sides.

6. The points that arise for consideration are;

1. Whether the amendment sought by the plaintiff is necessary to determine the real question involved in the suit?

2. What order?

7. Perused pleadings and materials available on record, the aforementioned points answered as under :

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

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

**:-REASONS:-**

**8. Point No.1:-** This is a suit for the relief of declaration & permanent injunction in respect of the suit schedule property.

**9.** Learned counsel for plaintiff submits that, the proposed amendment is very essential to determine the real question involved in the matter between the parties. Further submits that, the proposed amendment is very essential to avoid the multiplicity of litigation filed this application.

**10.** The learned counsel for the defendant submits that the application filed by the plaintiff is not necessary to decide the matter in controversy between the parties. Further submits that if the application is allowed then it would be changed the nature of suit.

**11.** At this point of time, it is very appropriate to note the provision of Order 6 Rule 17 of the Civil Procedure Code, it reads as follows,

**Order 6 rule 17 of Code of Civil Procedure 1908, 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.”

**12.** On perusal of the above provision of law, it appears that the Court has discretionary power to allow either party to amend their pleadings at any stage of the proceedings which are necessary to decide the case. The rule allows, "at any stage", all amendments which satisfy two conditions (a) of not working injustice to the other side and (b) of being necessary for the purpose of determining the real question in controversy between the parties.”

Proviso to the provision imposes caution on the Court that no such application for amendment shall be allowed after the commencement of the trial. However, the party has to prove that in spite of due diligence he could not have raised the matter before the commencement of trial.

**13.** At this point of time, it is proper to cite the judgment of Surender Kumar Sharma vs Makhan Singh, reported in (2009)10 SCC 626, the Hon'ble Supreme Court of India has held as follows,

**“5. As noted here in earlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.**

**6. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise. (See B.K. Narayana Pillai v. Parameswaran Pillai [(2000) 1 SCC 712 : AIR 2000 SC 614] .) Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for**

**amendment of the plaint, such prayer for amendment cannot be allowed.”**

**14.** Further in Pirgonda Hongonda Patil vs Shidgonda Patil, reported in AIR 1957 SC 363, the Hon’ble Supreme Court of India has held as follows,

**“The Power under Rule 17 is entirely discretionary to be used judicially on consideration of the circumstances of each case. The rule allows, "at any stage", all amendments which satisfy two conditions (a) of not working injustice to the other side and (b) of being necessary for the purpose of determining the real question in controversy between the parties.”**

**15.** In Rajkumar Guruwara vs S.K. Sarwagi and Co. (P) Ltd., reported in (2008)14 SCC 364, the Hon’ble Supreme Court of India has held as follows,

**“18. Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation. The plaintiff not only failed to satisfy the conditions prescribed in proviso to Order 6 Rule 17 but even on merits his claim is liable**

**to be rejected. All these relevant aspects have been duly considered by the High Court and rightly set aside the order dated 10-3-2004 of the Additional District Judge.”**

**16.** The Hon'ble High Court of Karnataka has held in the decision reported in **ILR 2012 KAR 3961, Smt. Gowradevi S. Orekondy and others vs. K.B.Rudrappa and others** – Code of Civil Procedure 1908-orders 6 rule 17 the amendment ought to be allowed which satisfied two conditions such as (a) if amendment is not working injustice to the other side, and (b) of being necessary to the purpose of determining the real questions in controversy between the parties.

**17.** As order 6 rule 17 itself states that the Court may allow either party to alter or amend the pleadings which are necessary for the purpose of determining the real questions in controversy between the parties. Further it states that no amendment application 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. However, in the above cited judgment (2009)10 SCC 626, the Hon'ble Supreme Court of India has held that even if the amendment application is filed at belated stage and if such amendment to the pleading is necessary in order to give full

and complete justice, then Court has to allow such application. Further in the remaining above cited judgments also, it is stated that if the amendment is necessary for proper and such amendment is necessary to determine the real question in controversy in between the parties, Court may allow such application.

**18.** Under this application, the applicant has contended that by oversight and by clerical mistake, the survey number and village in which the property is situated is wrongly mentioned in the plaint. But, the learned advocate for the defendant has argued that if the application is allowed, then it will change the nature of the suit. On the other hand, in order to do complete justice and in order to avoid multiplicity of proceedings and in order to decide the real controversies between the parties, the survey number has to be corrected.

**19.** The said clerical mistake should not be made as a ground to deny the plaintiff to incorporate the amendment in support of her case as every party is having its own right to plead the facts in support of his case. Therefore, On perusal of contents of pleadings and the relief sought by the plaintiff in the present case it is very clear that the proposed amendment made by the plaintiff/applicant is necessary to determine the real question in

controversy between the parties. The said amendment is necessary to adjudicate the matter finally between the parties. Moreover, every opportunity should be given to the parties to plead their assertions before the Court. However, there is delay in filing the present application. In the above cited judgment, the Hon'ble Supreme Court of India has held that such delay may be condoned by imposing cost. Hence, for all these reasons, I am of the opinion that, the plaintiff has made out grounds for allowing the proposed amendment. **Accordingly I answer Point No.1 in the Affirmative.**

**20. Point No.2 :-** For the reasons discussed above, proceed to pass the following;

### **ORDER**

I.A. No. X filed by the plaintiff under Order VI Rule 17 R/w sec 151 of C.P.C is hereby allowed subject to cost of Rs. 2,000/-.

The plaintiff is permitted to amend the plaint as prayed in I.A.No. X.

As the case is of the year 2017, the plaintiff is hereby directed to carry out amendment & also furnish amended plaint on next date of hearing without seeking any adjournment.

No order as to costs.

(Typed by me in my laptop, revised, corrected and then pronounced by me in the open Court, on this the **13<sup>th</sup> day of February, 2024.**)

**(IRANNA HUNASHIKATTI)**  
**Addl. Civil Judge and J.M.F.C.,**  
**Honnavar.**

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