

IN THE COURT OF ADDL CIVIL JUDGE & JMFC
AT: HONNAVAR

Present:: Sri. Chandrashekhar Banakar.,
B.A., LL.B., LL.M.,
Principal Civil Judge & JMFC., Honnavar

Dated this the 18th day of June, 2022
O.S. No. 88/2013

Plaintiff:

Smt.Santhan Remandi Vaaz
Aged about 55 years,
R/o.Chikkankod paiki Gundibail,
Tq: Honnavar.

(By Advocate Sri.GPH)

//Vs//

Defendants:

Grama Panchayath Gundibail,
Nishpat President
Timmappa Narayana Naik,
Honnavar and others

(By Advocate Sri.VMB)

ORDERS ON I.A.V

Applicant/plaintiff:

Smt.Santhan Remandi Vaaz

//Vs//

Opponents/defendants:

1. Grama Panchayath Gundibail,
Nishpat President
Timmappa Narayana Naik,
Honnavar and others

ORDERS ON I.A.V

This application is filed by the plaintiff seeking permission to amend the plaint by inserting some portions and prayer in the plaint.

2. In the annexed affidavit sworn by plaintiff, it is submitted that she is the absolute owner in possession of the suit schedule properties and there is a road called Chikkankod-Hosakod road adjacent to the suit schedule properties and since from long time, the rain water used to flow over the drainage situated adjacent to the said road. But, after institution of this suit, the defendants by forcefully have made drainage and changed the mode of the rain water to go over the suit schedule properties. Hence, it is necessary to seek for the amendment of the plaint.

3. To the said application defendants has filed his objection by contending that the application is not maintainable. Further he has contended that he has no objection to the amendment sought in para No. 1 and 2. But, the amendment which is sought in the para No. 3 will change the nature of the suit. Under this amendment, the plaintiff is claiming the relief of declaration as well as the relief of mandatory injunction. This will change the nature of the suit. Hence, he prayed to dismiss the application.

4. I have heard the learned counsels for parties and perused the record.

5. The point that arise for my consideration is:-

Whether applicant/plaintiff has made out sufficient grounds to allow I.A., No.V filed under order VI rule 17 of CPC?

6. My answer to the above point is in the **affirmative** for the following:-

REASONS

7. **Point No.1**:- The above application is filed by the applicant/plaintiff seeking permission from this Court to amend the plaint.

8. 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:- 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. On perusal of the above provision of law, it is clear that, if application for amendment of pleadings is filed at a belated

stage, the said applications cannot be allowed by the Court. But if the amendment sought by the party is necessary for the proper adjudication of the suit or cause of action arose after the institution of the suit or situation compels the party to file the amendment application based on subsequent events, then the said amendment can be allowed. In this regard, it is proper and necessary to quote some judgments. They are as follows:

10. In K. Krishnachari vs Smt. Malathi, reported in 1995 SCC OnLine Kar 443, the Hon'ble High Court of Karnataka has held as follows:

"7. A bare reading of Rule 17 *per se* shows that all amendments which are necessary for the purpose of determining the real question in controversy between the parties can be allowed and will have to be allowed when an application for amendment was moved irrespective of stage of proceedings at which the application is moved. The Court may allow such amendment subject to terms and conditions including costs. The object of this provision is also to avoid the multiplicity of the proceedings relating to the same cause of action, or multiplicity of the proceedings involved in the suit, and the purpose is that real controversy and questions involved between the parties may be determined finally. The basic principle of law in this connection has been laid down by the Privy Council as well as by the Supreme Court in many cases. I may refer here

the leading decision of the Supreme Court in the case of *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363.] . In that decision, their Lordships of the Supreme Court has quoted with approval as correct principle of law enunciated by Batchelor, J., in the case of *Kisandas Rupchand v. Rachappa Vithoba* [ILR (1909) 33 Bom. 644 : 4 Ind. Cas. 726.] . Their Lordships observed as under:

“We think that the correct principles were enunciated by Batchelor, J., in his judgment in the same case viz., *Kisandas Rupchand*, supra, when he said at pp 649-650”:

“All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side; and (b) of being necessary for the purpose of determining the real questions in controversy between the parties.... but I refrain from citing further authorities as in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment

must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side, or can it not?"

11. Further in Rajesh Kumar Aggarwal and others vs K.K. Modi and others, reported in (2006) 4 SCC 385, wherein the Hon'ble Supreme Court of India has held as follows,

15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed

and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit."

12. So, from perusal of the above cited judgments, it is clear that subsequent events to be taken note while considering the amendment application in order to reduce subsequent litigation. Further, to shorten the litigation, subsequent events which took place during the pendency of the suit can be considered while passing order under order 6 rule 17 CPC."

13. As per the pleadings of the applicant, in this suit the defendants have changed the water flow during the pendency of the suit and in such situation claiming for the relief of bare injunction would defeat the rights of the plaintiff. In such situation, only option left to the plaintiff is to seek for the amendment of the plaint. If this option is not opened for the plaintiff, then she has to file a separate suit, which leads to multiplicity of suits and multiplicity of disputes.

14. Moreover, the grounds urged by the applicant are genuine grounds. Amendment will assist the court for proper and final adjudication of the dispute. Moreover, if the above application is allowed, no hardship will be caused to other side. Moreover, every opportunity should be given to the parties to plead their assertions before the Court. To avoid the multiplicity

of suits, application needs to be allowed. Hence, in the interest of justice, the above amendment has to be allowed. Accordingly, I have answered point No.1 in the **affirmative**.

15. **Point No.2:-** In view of findings on point No. 1, I proceed to pass the following:

ORDER

I.A. No. V filed by the applicant/plaintiff under section 151 and Order VI Rule 17 of CPC is allowed.

The plaintiff is permitted to carry out necessary amendment.

For carrying out amendment and for amended plaintiff call on 15/07/2022.

The plaintiff is hereby directed to pay the proper Court fee on the additional prayer sought in the plaint.

Call on 15/07/2022.

Sd/-
**C/C Addl. Civil Judge & J.M.F.C.,
Honnavar**