

Orders on I.A.

The plaintiffs have filed I.A. under Order VI Rule 17 of C.P.C. praying this court to permit to amend the plaint as suggested in the application in the ends of justice.

2. The applicant sworn to the affidavit that, the plaintiff No.2 and 3 are the children and she being the plaintiff No.1 and also mother of other plaintiffs have instructed to file the said petition for amendment of plaint. It is further sworn to the affidavit that, out of 10 cents in extent of land stated in the plaint, the Government acquired 5.41 cents for the purpose of widening the road and the Government has granted compensation for the acquired portion and further she

submits that, the compensation amount received by Alen Mendonca and Alice Mendonca on behalf of the plaintiff family and the same was deposited by the said Alen Mendonca along with his own fund before Canara Bank. Further she says that, the plaintiffs have recently learnt that the said amount withdrawn by the defendant without the consent of the plaintiffs and the said schedule 'B' property also liable to be divided into two shares among the plaintiffs and defendant and the said act of the defendant recently came to the knowledge of this plaintiff and the proposed amendment will not change the nature of the suit. Hence, prays to allow the application.

3. Objections came to be filed, wherein the defendant submits that, the stage is set down for arguments and the evidence is fully completed. Seeing the weakness of the plaintiffs case, the plaintiffs have been shirking to place their arguments and trying to drag the said suit. The defendant should not reap and enjoy the benefits of this litigation peacefully. If the amendment application is allowed the character and nature of the suit will be changed and if allowed there will be multiplicity of proceedings. The plaintiffs have averred in the original plaint itself that 5.41 cents of land has been acquired by the Government and it has been averred in the deposition of the PW1, both in chief examination as well as the cross

examination and when the plaintiffs have already averred about this fact through pleading and by way of deposition, the amendment should have been long back included in the pleadings in the very first place and this plaintiffs have willfully and negligently not included the same for the reasons best known to the plaintiffs and the said negligence could have been rectified before concluding of the evidence on the side of the plaintiffs and if the application is allowed, it will lead to bringing of new facts and complicating a simple suit. So therefore, this application is filed only to drag the proceedings. Hence, prays to dismiss the application.

4. After hearing arguments and perusal of the records, the points which arises for my consideration are as follows:

1. Whether the plaintiffs have made out grounds to allow the application?
2. What order?

5. The answers to the above points are as under :

Point No.1 : In the affirmative;

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

R E A S O N S

Point No.1 :

6. The stage is set down for final arguments, so the entire records has to be seen before arriving to the conclusion. Now the suit of the plaintiffs is for partition to direct division of the immovable property described in schedule 'A' of the plaint into two equal and fair shares with reference to good and bad soil and by metes and bounds along with residential building and other improvements made therein among the plaintiffs and defendant and allot and deliver $\frac{1}{2}$ such share to the plaintiffs jointly as their share in plaint 'A' schedule property. Now in para No.2 of the plaint, it is stated that, the plaintiffs submit that out of 10 cents of the said property the Government had acquired 5.41 cents in the extent for the purpose of widening the National Highway and compensation amount is being received by Alis Mendonca during her life time. Now the present plaintiffs wanted to amend the plaint by stating that Alis Mendonca had received the compensation on behalf of the plaintiffs family and this defendant have withdrawn the said amount without consent of the plaintiffs and now they want to insert schedule 'B' and they want to include this property and now the plaintiffs submit that defendant is not willing to pay the said compensation amount with an ulterior

motive. This court has gone through Order VI Rule 17 of C.P.C. which is extracted for better understanding.

RULE 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 mm 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.

7. After perusal of this provision it can be seen that once the trial has commenced the parties are not allowed to amend the pleadings and they are allowed only if court comes to conclusion that inspite of due diligence party could not have raised matter before commencement of trial. Now it is very much pertinent to discuss that when the plaintiffs knew that 5.41 cents is being acquired out of 10 cents for the purpose of widening the National Highway and compensation amount is being received by Alis Mendonca during her life time the plaintiffs would have smell the intention of the defendant that once they have denied to

affect the partition in respect of the said 'A' schedule property then how could they expect that defendant would provide money from the compensation amount received by Alis Mendonca. Further when the proposed amendment is looked into the plaintiffs have not mentioned on which date the alleged amount is being withdrawn. So in the absence of such pleadings in the application it is quite difficult to permit the plaintiffs for carryout such amendment. No doubt the character and nature of the suit will not be changed because it is just insertion of a particular property, but concept of due diligence cannot be brushed aside. So therefore, for more clarity at this stage of discussion, this court likes to place reliance upon **Life Insurance Corporation of India Vs. Sanju Builder Pvt. Ltd.**, 2022 SCC Online SC 1128, wherein *the Supreme Court formulated the guidelines in an appeal against the judgment of Bombay High Court dated December 13, 2021 allowing amendment of pleadings in a suit for specific performance of a contract. The guidelines are as follows:*

1. *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*
2. *Courts to allow prayer for amendment:*

1. if the amendment is required for effective and proper adjudication of the controversy between the parties, and
 2. to avoid multiplicity of proceedings, provided
 1. the amendment does not result in injustice to the other side,
 2. by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side, and;
 3. the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).
 3. It would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision.
 4. Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.
 5. where it is intended to rectify the absence of material particulars in the plaint.
 6. Where the amendment sought is only with respect to the relief in the plaint and is predicated on facts which are already pleaded in the plaint.
3. A prayer for amendment is generally required to be allowed unless:

- 1. by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- 2. the amendment changes the nature of the suit,*
- 3. the prayer for amendment is malafide, or*
- 4. by the amendment, the other side loses a valid defence.*
- 4. In dealing with a prayer for amendment of pleadings, the court to avoid a hyper technical approach is ordinarily required to be liberal especially where the opposite party can be compensated by costs. The court should also be liberal if the amendment is sought before commencement of trial.*
- 5. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- 6. Amendment should be disallowed, where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.*

8. Therefore on perusal of the aforesaid guidelines laid down by the Hon'ble Supreme Court it can be seen that the basically it is a suit for partition and merely insertion of claiming share in respect of the alleged withdrawal of amount by the defendant will not change the nature of the

suit. Further, if at this stage the proposed amendment is not allowed then it give raise to multiplicity of litigation and it would amount to depriving legitimate right of the plaintiffs in claiming share. However, the hardship faced by the defendant need to be well compensated by imposing costs as it would be ordered below. Therefore, I answer **point No.1 in the affirmative.**

Point No.2 :

9. In view of the above reasons, I proceed to pass the following:

ORDER

The application filed under Order VI Rule 17 of C.P.C. is hereby allowed subject to following conditions:

1. The plaintiffs are permitted to amend the pleadings as per the proposed amendment sought in the plaint in the presence of Sheristadar of this court.

2. The plaintiffs shall pay cost for a sum of Rs.2,500/- to the defendant for facing hardship.

3. If plaintiffs wishes to lead evidence on such point his evidence shall

mandatorily be restricted only in respect of
'B' schedule property.

Call for carrying out amendment and
furnish amended plaint without any delay
by 07.04.2025.

(Santhosh Srivastava)
Addl. Senior Civil Judge and A.C.J.M.,
Udupi.