



IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT: HAGARIBOMMANAHALLI

DATED THIS THE 7th DAY OF JANUARY- 2025

PRESENT

Sri. SAYED MOHIUDDIN URF KHAWAJA PEERAN, B.A., LL.B. (Spl.),

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.36/2015

- PLAINTIFF/s :
- 1) **Kurubara Mariyappa @ Chilagodu Kurubara Mariyappa S/o Late K.Hanumanthappa ,**
Aged about: 52 years, Occ: Agriculturist,
R/o:Pinjar Hegdal Village, H.B.Halli Taluk,
Bellary District.
 - 2) **Smt.Gubbamma W/o Late Kurubara Sanna Bailappa,**
Aged about: 70 years, Occ: Agriculturist,
R/o:Pinjar Hegdal Village, H.B.Halli Taluk,
Bellary District.
 - 3) **Chilagodu Kurubara Hanumanthappa @ Kurubara Hanumanthappa S/o Kurubara Sanna Bailappa ,**
Aged about: 40 years, Occ: Agriculturist,
R/o:Pinjar Hegdal Village, H.B.Halli Taluk,
Bellary District.
 - 4) **Smt.Kotramma W/o Late Chilagodu Kurubara Bheemappa,**
Aged about: 35 years, Occ: Agriculturist,
R/o:Pinjar Hegdal Village, H.B.Halli Taluk,
Bellary District.

Vs.

DEFENDANT/s : 1. **Mainalli Neelamma W/o Late Balappa,
since dead by L.Rs.,**

1(a). **Mahadekka @ Mahadevamma
W/o Late Somashekar Reddy
D/o Late Balappa,**

Aged about: 46 years, R/o Nandipura Village,
H.B.Halli Taluk, Bellary District.

1(b). **Dodda Basappa S/o Late Balappa,**

Aged about: 46 years, Occ: Agriculturist,
R/o Nandipura Village, H.B.Halli Taluk,
Bellary District.

2. **Huvina Lakshnavva W/o Hanumantha
Reddy,**

Aged about: 65 years, Occ: Sinecure,
R/o Nandipura Village, H.B.Halli Taluk,
Bellary District.

I.A.No.IX

APPLICANTS/PLAINTIFFS/s: **Kurubara Mariyappa @ Chilagodu
Kurubara Mariyappa S/o Late
K.Hanumanthappa and others**

(Rep. by Sri.**C.B.P.**, Advocate.)

Vs.

RESPONDENTS/DEFENDANT/s :**Mainalli Neelamma W/o Late
Balappa, since dead by L.Rs.,
and others**

(Def.No.1(a) & (b) Rep.by Sri. **C.B.R.**, Advocate.)

(Def.No.2 Rep.by Sri.**N.G.B.**, -Advocate)

**:ORDER ON I.A. No.IX FILED BY THE PLAINTIFFS UNDER
ORDER VI RULE 17 R/w SEC.151 of CPC:**

The plaintiffs have filed the present I.A.No.IX under Order VI Rule 17 R/w Sec.151 of CPC to amend the plaint.

The proposed amendment is as under :-

SCHEDULE

Add the boundaries after the schedule of the plaint.

BOUNDARIES

East : Varadhapura Bheemappa

West: Plaintiffs land

***North: Govt. land and Shanna Mukkappa's
land***

***South: The pit and Bellary Ramalingappa's
land.***

2. In the accompanying affidavit to the IA, it is stated by the plaintiff No.1 that, due to oversight he could not instructed to his Counsel regarding the boundaries of the suit schedule property. Recently his Counsel advised him to furnish the boundaries of the suit schedule property,

therefore he willing to add the boundaries of the suit schedule property in the plaint schedule. The said amendment is very much necessary to adjudicate the matter. The said amendment will not change the nature of suit and cause of action. If the application is allowed no injustice will be caused to the defendants. If the application is not allowed injustice will be caused to the plaintiffs. Hence, he prays to allow the IA.

3. To the said application, the defendants have filed objections by denying the contention of the plaintiffs, and further contended that in the present case on hand Issues were framed, trial has been commenced. At this stage the plaintiffs have filed the present application, same is not maintainable. The present suit is filed in the year 2015 after lapse of more than 8 years, the plaintiffs have filed the present application for amendment of plaint to fill up the lacuna, hence they prays to dismiss the application.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

1. Whether the plaintiffs have made out proper grounds to allow the I.A.No.IX?

2. What order?

6. My answers to the above points are as follows:

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

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

REASONS

7. Point No.1 :- The present suit is filed by the plaintiffs against the defendants for the relief of declaration of title and permanent injunction with respect of the suit schedule property. In the present case on hand, Issues were framed, PW1 to PW3 are examined before the Court. On 17.09.2019 case was posted for cross-examination of PW1 to PW3. On 19.09.2022 cross-examination of PW1 was taken as nil. On 12.12.2022 cross-examination of PW3 was taken as nil and case was posted for defense evidence. On 31.05.2023 the present application has been filed by the plaintiffs for amendment of plaint. As per the records it appears that PW1

to PW3 examined before the Court but the defendants have not cross-examined the PW1 to PW3.

8. Order 6 Rule 17 of Civil Procedure Code., 1908 provides as under:

"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."

9. I have perused the material available on record. In the present suit the suit schedule property is Sy.No.282H

measuring 15.29 acres. In the plaint schedule the plaintiffs have not shown the boundaries of the suit schedule property. Now the plaintiffs willing to add the boundaries of the suit schedule property in the plaint schedule by way of amendment. The defendants have objected for the said amendment. On going through the same it appears that the said amendment will not introduce any new facts. The said amendment will not withdrawn any admissions and further it appears that, the said amendment is necessary for determining the real question in controversy between the parties. The said amendment will not set up an entirely new case. The said amendment is appeared to be necessary to clarify the pleadings.

10. In the reported decision **(2022) SCC Online SC 1128 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.)** in **Para No.70** of the said Judgment the **Hon'ble Supreme Court of India** held as under.

70. Our final conclusions may be summed up thus: (i) Order II Rule 2 CPC operates as a bar against a subsequent

suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) 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.

(iii) The prayer for amendment is to be allowed.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) 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

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) 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,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach,

and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) 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.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) 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.

(x) 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, the amendment must be disallowed. Where, however, 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, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the

court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).

On looking through the facts and circumstances of the case, I am of the opinion that if the amendment application is allowed no injustice will be cause to the defendants. Mere allowing for amendment of pleadings does not means that same is proved. The burden of proving the same as per amendment is lies on the person who sought the amendment. Furthermore, the defendants have full opportunity to file the additional written statement to contest the suit. If the said application is not allowed it cause injustice to the plaintiffs and further it amounts to multiplicity of the proceedings. If the application is allowed no injustice will be caused to the defendants. If the said application is allowed on cost it would meets the ends of justice. On the basis of above reasons and discussion, I hold

Point No.1 in the **AFFIRMATIVE**.

11. Point No.2 :- For the aforesaid reasons and discussions made above I proceed to pass the following: -

ORDER

I.A.No.IX filed by the plaintiffs under Order VI Rule 17 R/w Sec.151 of CPC., is hereby allowed on cost of Rs.500/-.

The plaintiffs are permitted to amend the plaint as prayed in the IA.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the **7th day of January 2025.**)*

**(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI**