

KAVN300004932020



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

DATED THIS THE 5th DAY OF DECEMBER- 2025

PRESENT

Sri. SAYED MOHIUDDIN URF KHAWAJA PEERAN, B.A., LL.B. (Spl.),
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.45/2020

- PLAINTIFF/s :1) **Maheshwari W/o B.Rajshekarappa,**
Aged : 65 years, Occ:Household,
R/o H.B.Halli, Taluk & Dist:Bellary.
- 2) **Sanjeev S/o B.Rajshekarappa,**
Aged : 45 years, Occ:Agriculturist,
R/o H.B.Halli, Taluk & Dist:Bellary,
now residing at B.T.Patil Nagar,
Koppal Tq & Dist:Koppal.

Vs.

- DEFENDANT/s: 1) **B.M.Siddalingayya S/o Shivanagayya**
Since dead by his LRs,
- 1(a) **Smt.Leelavathi W/o Late**
B.M.Siddalingayya,
Aged : 48 years,
- 1(b) **B.M.Pavankumar S/o Late B.M.**
Siddalingayya,
Aged : 30 years,
- 1(c) **B.M.Swetha D/o Late B.M.**
Siddalingayya,
Aged : 28 years,

- 1(d) **B.M.Supriya D/o Late B.M. Siddalingayya,**
Aged : 26 years,
All are R/o Old H.B.Halli, H.B.Halli
Taluk, Vijayanagara District.
- 2) **Prakash Mehata S/o Shukraraj Mehata,**
Aged : 47 years, Occ:Business,
R/o Basaveshwara Bazar Prakash
Jewelers, H.B.Halli, Tq & Dist: Bellary.
- 3) **Keshavareddy S/o Hanumareddy,**
Aged : 52 years, Occ:Contractor,
R/o old H.B.Halli, Tq & Dist: Bellary.

I.A.No.IX

APPLICANTS/PLAINTIFF/s: **Maheshwari W/o B.Rajshekarappa
& another,**

(Rep. by Sri.**B.M.A.**, Advocate.)

Vs.

RESPONDENTS/DEFENDANTS/s: **B.M.Siddalingayya S/o
Shivanagayya Since dead by
his LRs,
Smt.Leelavathi W/o Late
B.M.Siddalingayya and others,**

(Def.No.1(a) to (d) Rep.by Sri.**SBV.**, Advocate.)

(Def.No.2 & 3 Rep.by Sri.**MGR/GMD.**, Advocates.)

**:ORDER ON I.A. No.IX FILED BY THE PLAINTIFFS UNDER
ORDER VI RULE 17 of CPC:**

The plaintiffs have filed the present I.A.No.IX under
Order VI Rule 17 of CPC., for amendment of plaint.

The proposed amendment is as under :-

Add or inserting at page No.5 in prayer column 1(a) plaintiffs are the absolute owners and in possession of the suit schedule property, 2(a) as per the Court order authorities are directed to enter plaintiffs name in concerned records, mention here.

2. In the accompanying affidavit to the IA, it is stated by the plaintiff No.2 that, they have filed the present suit for the relief of permanent injunction. At the time of filing of the suit they have not secured documents to prove their title over the suit schedule property. Now they have found the necessary documents to prove their title over the suit schedule property. Therefore it is just and necessary to amend the plaint seeking the relief of declaration of title. The said amendment will not change the nature of the suit and cause of action. If the said application is allowed no injustice will be caused to the other side, If the said application is not allowed they will be put to hardship. Hence, they pray to allow the IA.

3. To the said application, the defendant No.2 and 3 have filed objections and denied the contention of the

plaintiffs, and further contended that the said proposed amendment is sought at belated stage. The plaintiffs have well aware that prior to filing of the suit the defendants have raised the construction in the suit schedule property. The defendant No.2 and 3 have filed the written statement before the Court in the month of November 2021 by specifically denying the title of the plaintiff over the suit schedule property. After lapse of 4 years of filing of the written statement the plaintiffs have filed the present application which is not maintainable. The said application is barred by law of limitation. The plaintiffs are not in possession of the suit schedule property. Without seeking the relief of possession the suit of the plaintiffs is not maintainable. 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 permanent injunction with respect of the suit schedule property. In the present case on hand, defendants have appeared before the Court and filed their written statement. Issues have been framed. When the case is posted for plaintiffs evidence, the plaintiffs have filed the present application for amendment of plaint. The defendants have opposed the same.

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. The plaintiffs have filed the present suit against the defendants for the relief of permanent injunction with respect of suit schedule property. Now the plaintiffs by way of amending the plaint willing to sought the relief of declaration of title over the suit schedule property. The defendants have opposed the same. On going through the materials available on record, it appears that the said amendment is necessary for determining the real question in controversy between the parties and for avoiding the multiplicity of the proceedings. The said amendment will not introduce any new case. The said amendment will not withdrawn any admissions. The defendants have taken a contention that they have filed the written statement in the month of November 2021 by denying the title of the plaintiffs over the suit schedule

property. After lapse of 4 years of filing of the written statement the plaintiffs have filed the present application, therefore the said application is barred by law of limitation. The said contention will be decided only after full fledged trial by framing the Issues with regard to limitation.

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 said amendment application is allowed no injustice will be cause to the defendant. Mere allowing for amendment of pleadings does not means that same are proved. The burden of proving the same as per amendment is lies on the person who sought the

amendment. In the present case on hand trial is not commenced. 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 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 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 5th day of December 2025.)

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