

KABI200009522020



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

DATED THIS THE 5th DAY OF JULY - 2024

PRESENT

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

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.101/2020

PLAINTIFF/s : **Sri.Hanchinagudi Kotresh S/o Late
Hanchinagudi Devappa,**
Aged about: 37 years, Occ: Agriculturist,
R/o:Kadalabalu Village,H.B.Halli Taluk,
Ballari District.

Vs.

DEFENDANT/s : **1. Smt. Kadlabalu Hanumanthvavva
W/o Late Shivappa,**
Aged about: 90 years, Occ: Coolie,

**2. Sri. Kadlabalu Yamunappa S/o Late
Shivappa,**
Aged about: 60 years, Occ: Agricultural coolie,

3. Sri. Kadlabalu Kotresh S/o Late Shivappa,
Aged about: 55 years, Occ: Tailoring work,

All are R/o M.P.Prakash Nagara,
Huvina Hadagali Taluk, Ballari District.

I.A.No.VI

APPLICANT/PLAINTIFF/s : **Hanchinagudi Kotresh,**

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

Vs.

RESPONDENT/DEFENDANT/s : **Kadlabalu Hanumanthavva
and others,**

(Def.No.1 Dead)

(Def.No.2, 3 and Def.No.1(a) Rep.by
Sri.**P.R.**,-Advocate)

**:ORDER ON I.A. No.VI UNDER ORDER VI RULE 17
R/w SEC.151 of CPC:**

The plaintiff has filed the present I.A.No.VI under Order VI Rule 17 R/w Sec.151 of CPC for seeking permission to amend the plaint.

The proposed amendment is as under :-

“ 5A. The, Plaintiff and Defendants belong to the same family. On 30.04.1998 there was a family arrangement in between Hanchinagudi Hanumavva and her sons Pampanna,

Devendarappa @ Devappa, Gangappa as 1st Party, Hanchinagudi Kadlemma and her mother Bharamavva and sons Kotrappa @ Kotresh, Hanumanthappa as 2nd Party, Hanchinagudi Lakshnavva W/o Lakshamappa and daughter-in-law Hanumakka as 3rd Party, Hanchinagudi Hanumanthavva W/o Shivappa and her sons Yamanappa, Hanumanthappa, Kotrappa as 4th Party, Hanchinagudi Nagappa S/o Bharamavva and sons Kristappa, Hanumappa, Shantappa as 5th Party. In said family arrangement the land bearing Sy.No.306B totally measuring 11 Acres 57 cents situated at Kadlabalu Village, H.B.Halli Hobli, Hadagali Taluk was divided in between the above said persons. In the said Partition/Family arrangement Defendant No.1 got share as per "D" Schedule as 4th Party in Sy.No.306B measuring 2 Acres 60 cents within the boundary East: Same Sy.No.Hanumavva Hissa land; West: Same Sy.No.Kadlemma Hissa land; North : Land of P.Ratnamma; South: Land of Muderakashappa. After the said Family arrangement on the same day itself i.e., 30-04-1998 the defendants who got share as

per “D” Schedule have executed Agreement-cum-sale deed infavour of the Plaintiff by mentioning the boundaries and have handed over the possession to the Plaintiff on that day itself. Since from 30-04-1998 the Plaintiff is in possession and enjoyment over the suit schedule property even to this day and doing agricultural activities on own land and also the suit schedule land.

5B. The Original Copy of the Family Arrangement Deed/Pallu Vibhagha Deed is in the hands of defendants only. The Plaintiff is having only the Xerox copy of the same. As the Plaintiff and Defendants were relatives, the Plaintiff was never objected by Defendants for doing cultivation over the suit schedule land.”

2. In the accompanying affidavit to the IA.No.VI it is stated by the plaintiff that, he has filed the present suit against the defendants for the relief of specific performance of contract with respect of suit schedule property. The defendant No.1 Kadlabalu Hanumanthavva died on 28.04.2022 leaving behind defendant No.2, 3 and Huligemma

@ Sarojavva as her legal heirs. The said defendant No.2 and 3 and daughter Huligemma have stepped into the shoes of deceased Hanumanthavva. Due to inadvertence and also due to oversight the proposed amendment was not mentioned in the plaint at the time of filing of the suit. 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 plaintiff. Hence, he prays to allow the IA.

3. To the said application, the defendants have filed their objections by denying the case of the plaintiff, and further contended that the reasons assigned in the application are false. In the present case on hand issues have been framed. With an intention to drag on the proceedings the plaintiff has filed this false application. The plaintiff challenged the orders of Interim application before the Hon'ble Sr.Civil Judge in M.A.No.9/2021, the said Appeal was dismissed. There is no proper grounds to allow the said application. Hence, they prays to dismiss the IA.

4. Heard the arguments and perused the records.
5. The following points arise for my consideration:

1. **Whether the plaintiff has made out proper grounds to allow the I.A.No.VI?**

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 plaintiff against the defendants for the relief of specific performance of contract with respect of the suit schedule property. In the present case on hand, issues have been framed but trial has not yet commenced. When the case was posted for bringing the L.Rs of defendant No.1, plaintiff has filed the present application. The plaintiff is willing to add the para No.5(a) and 5(b) in the plaint. The defendants have objected for the said amendment.

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. According to the plaintiff, the father of the plaintiff has purchased the suit schedule property from the defendants. On going through the material available on record it discloses that, the plaintiff is willing to add the para No.5(a)

and (b) in the plaint to show that how the defendants have acquired the title over the suit schedule property. 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 negatived.

(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 plaintiff 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. The Advocate for plaintiff relied the reported decisions ;

(I) AIR 1995 Supreme Court 1498 in Civil Appeal No.4407 of 1995 Akshaya Restaurant V/s Anjanappa and another

(II) AIR 2008 Supreme Court 2303 in Civil Appeal No.3576/2008 Rajkumar Gurawara (Dead) Thr.Lrs V/s M/s S.K.Sarwagi and Co.Pvt.Ltd., and Anr.

(III) (2023) SCCR 600 Supreme Court of India in Civil Appeal No.2023[@ SLP(C) No.28377 of 2018] Ganesh Prasad V/s Rajeshwar Prasad and others.

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.VI filed by the plaintiff under Order VI Rule 17 of CPC., is hereby allowed on cost of Rs.200/-.

The plaintiff is 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 July 2024.**)*

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