

KABI200024952016



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

DATED THIS THE 3rd DAY OF APRIL - 2025

PRESENT

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

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI

O.S.No.248/2016

PLAINTIFF/s : **T.Megharaj S/o Thippa Naik,**
Aged about: 33 years, Occ: Agriculturist,
R/o: Kalvi Thanda, Hadagali Taluk,
Bellary District.

Vs.

DEFENDANT/s: **R.Reddy Naik S/o Rama Naik,**
Aged : Major, Occ: Agriculturist,
R/o: Bhityana Thanda, Hadagali
Taluk, Bellary District.

I.A.No.V

APPLICANT/DEFENDANT /s: **R.Reddy Naik S/o Rama Naik**

(Rep. by Sri.**K.P.K.**, Advocate.)

Vs.

RESPONDENT/PLAINTIFF/s: **T.Megharaj S/o Thippa Naik**

(Rep.by Sri.**S.N.**,-Advocate)

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

The defendant has filed the above said I.A.No.V under Order VI Rule 17 R/w Sec.151 of CPC for amendment of written statement.

Proposed amendment of written statement is as under;

SCHEDULE

1) In Page No.4, in Para No.6 of the written statement, in 8th line, after the words Hampasagara Village, insert the following words “ the Government has granted patta of Plot No.29 measuring 45 X 70 feet in favour of Hudekar Karibasamma. On the basis of said patta Hudekar Karibasamma name was entered in Gramapanchayath records and it was given Khata No.118 and it is situated in Ward No.7 of Hampasagara Village, the defendant is herewith producing the Form No.10 for the year 2006-07 of Plot No.29, Khata No.7/118 standing in the name of Hudekar Karibasamma”.

2) In Page No.4, Para No.6 of the written statement, in 11th line, after the words Dtd: 19.09.2007, insert the following words “on the basis of the said sale deed the mutation was

effected in the name of Smt.Chandramma and the Khata number was again changed as Khata No.7/113. The certified copy of proceeding of Grama Panchayathi, Hampasagara dated 06.09.2011 in Mutation order No.37/11-12 is herewith produced for the kind perusal of the Hon'ble Court".

3) In Page No.6, in Para No.11 of the written statement, in 4th line, after the words not correct, insert the following words, " the Khata number and boundaries mentioned in the schedule of the plaint is totally false and there is no such property is existing. Because the plots in the said rehabilitated area were granted plots measuring 45 X 70 feet. But this plaintiff described the measurement as 30 X 40 feet and he has not pleaded anything about how the Bhajanthri Huligemma got title over the suit schedule property who is the vendor of the plaintiff vendor. Hence the suit of the plaintiff is not maintainable.

2. In the accompanying affidavit to the IA., it is stated by the defendant that, at the time of filing of the written statement due to oversight and inadvertent mistake the defendant has not incorporated the proposed amendment in his written statement. The said amendment is necessary

for effective adjudication of the matter. If the said application is allowed no injustice will be caused to the other side. If the application is not allowed he will be put to hardship. Hence, he prays to allow the IA.

3. In spite of providing sufficient opportunities the plaintiff has not filed any objections to the I.A.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

1. Whether the defendant has made out proper grounds to allow the I.A.No.V?

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 defendant for the relief of declaration of title and permanent injunction with respect of suit schedule property. I have perused the records, in the present case on

hand Issues were framed, plaintiff and his witnesses were examined as PW1 to PW4. When the case was posted for cross-examination of PW1 to PW4, the defendant has filed the present application for amendment of written statement.

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. As stated above the present suit is filed by the plaintiff against the defendant for the relief of declaration of title and permanent injunction with respect of suit schedule property. Now the defendant is willing to amend the written statement as prayed in I.A.No.V. On going through the records 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 any 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).

11. In the reported decision **(2007) 5 SCC 602 USHA BALASHAHEB SWAMI AND OTHERS V/S KIRAN APPASO SWAMI AND OTHERS** in *Para No.19, 20 ,21* of the said Judgment the **Hon'ble Supreme Court of India** held as under.

19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see [B.K. Narayana Pillai v. Parameswaran Pillai \(2000\(1\) SCC 712\)](#) and [Baldev Singh & Ors. v. Manohar Singh \(2006 \(6\) SCC 498\)](#)]. Even the decision relied on by the plaintiff in [Modi Spinning \(supra\)](#) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in

Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi's case (supra) as follows :-

"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357], this Court observed "that the Courts are more generous in allowing amendment of the written statement as

the question of prejudice is less likely to operate in that event". In that case this Court also held "that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."

12. 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 plaintiff. 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 plaintiff has full opportunity to file the rejoinder to the said amendment. If the said application is not allowed it cause injustice to the defendant and further it amounts to multiplicity of the proceedings. If the application is allowed no injustice will be caused to the plaintiff. Furthermore, inspite of providing sufficient opportunities the plaintiff has not filed any objections to the said application. On the basis of above reasons and discussion, I hold **Point No.1** in the **AFFIRMATIVE**.

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

ORDER

I.A.No.V filed by the defendant under Order VI Rule 17 R/w Sec.151 of CPC., is hereby allowed.

The defendant is permitted to amend the written statement 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 3rd day of April 2025.)

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