

**IN THE COURT OF THE CIVIL JUDGE & JMFC,
HARAPANAHALLI**

Present: SMT. B.G.SHOBHA, M.A., LL.B.,
Civil Judge & JMFC, Harapanahalli.

Dated this the 21st day of January, 2019.

OS. NO.29/2013

Plaintiff/s : C.N. Lingaraja @ Ningappa
(Rept by Sri. K.B.R., Advocate)
-Vs.-

Defendant/s : Smt. Sakamma and another
(Rept. by Sri. A.K.A., Advocate)

IA. No.IX

Applicant/s : Smt. Sakamma and another
-Vs.-

Respondent/s : C.N. Lingaraja @ Ningappa

ORDERS ON IA.NO.IX U/O. 6 RULE 17 R/W.SEC 151 OF CPC

This is an application filed by the defendants seeking permission to amend the written statement as prayed in the application.

2. The said application is accompanied with affidavit sworn by the defendant No.2 wherein he stated that the plaintiffs have filed this suit for declaration and permanent injunction.

Earlier he could not led evidence due to unavoidable circumstances. This court has pronounced judgment. Thereafter the defendants have preferred appeal. The appellate court remanded this suit with a direction to give opportunity to the parties to led evidence and decide the suit on merit. In his written statement he has denied the averments of plaint and alleged gift deed. But he has not specifically about pleaded about the situation of suit schedule property. As such the particulars are very much essential to adjudicate the dispute between the parties. The defendants are illiterate ladies. After remand they came to know the survey number in which the suit schedule property is situated. Thereafter they have obtained RTC pertaining to Sy.No.216/K of Chigateri village. Therefore the amendment of his written statement is very much essential. If the application is allowed the nature of the suit will not be changed. Hence prayed to allow the application.

3. The said application is resisted by the plaintiff by filing objection accompanied with affidavit sworn by the plaintiff wherein he denied the averments of affidavit of defendant No.2. Further contended that the defendants have introduce new case

before this court. As per the provision no amendment shall be allowed after commencement of evidence. In RA No.12/2015 the Hon'ble Appellate court observed that opportunity to lead evidence not provided to the defendants and by allowing appeal directed defendants to lead evidence. Earlier the defendants took contention that suit schedule property is the joint family property and they are having half share. But now they have set up new story that suit schedule property is the government property. Hon'ble appellate court specifically directed the defendants to lead their evidence only. But contrary to the direction of the appellate court the defendants set up new things which is not sustainable under law. The proposed amendment is not all at necessary to adjudicate the matter in dispute. Said amendment is nothing but abuse of process of law. The applicable is barred by limitation and proposed amendment of written statement is altering the nature of suit. The allegation of the defendant is that the gift deed is created document, the present defendants are not parties to the document and they have no legal sanctity to dispute the said document as the donor is husband and father of defendants. Now they have set up false

story they have failed to prove that suit schedule property and other properties are joint family properties in OS No.35/2014 filed by them before Senior Civil Judge, Harapanahalli. After dismissal of said suit know they have hatched a plan to grab the property by creating new story. As such the present application is not sustainable under law. If the application is allowed the plaintiff will be put to irreparable loss and the same will change the nature of the suit. Hence prayed to reject the application.

4. Heard the arguments on both side. Perused the records.

5. On the basis of the above facts, the following points that arise for my consideration are;

1. Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?
2. What Order?

6. My answer to the above points are;

Point No.1	:	In the Affirmative;
Point No.2	:	As per the final order, for the following;

REASONS

7. **Point No.1:-** On perusal of contention urged by both parties it appears that the plaintiff filed this suit for the relief of

declaration of title and consequential relief of permanent injunction with respect to the suit schedule property. The present application is filed by the defendants seeking permission to amend the written statement by inserting proposed amendment as mentioned in application. According to them due to illiteracy they have not inserted said proposed pleadings in earlier stage as they came to know the said facts recently. The proposed amendment will not change his defense. On perusal of written statement filed by the defendants on 13-08-2013 it discloses that they have taken contention regarding alleged gift deed. Now he is intending to insert certain facts about alleged gift deed. If he is permitted to insert the proposed amendment in his written statement no prejudice will be caused to the plaintiff. The objection of the plaintiff is that the defendants falsely stating said fact and they set up new things. However whether suit schedule property is belongs to the defendants or not cannot be decided at this stage. When the defendants have taken such contention the burden lies on them to prove the same. The plaintiff is having opportunity to file rejoinder. The proposed amendment will not change the nature of suit. If defendants are

permitted to amend written statement no prejudice would be caused to the plaintiff.

8. I have relied upon citation reported in **AIR 2011 SIKKIM page No.1 (Dibya Prasad Pradhan & Ar. Vs.State of Sikkim)**. It is held that “ *commencement of trial as used in proviso to Order 6, Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments.*” I have gone through the principles laid down in aforesaid citation, it is applicable to the case on hand. In the instant suit also though the evidence has been adduced by the plaintiff, the evidence of defendant is not yet commenced.

9. The object of order 6 Rule 17 is entirely discretionary, to be used judiciously on consideration of the circumstances of each case. The rule allows, ‘at any stage’, all amendments may be allowed and if the said amendment is necessary for the purpose of determining the real question in controversy between the parties. Further it is a well-settled principle that the proposed amendment might have been sought, it will have to be allowed if no injustice is caused to either side. Therefore in view

of above discussion this court is of the opinion that the application is deserves to be allowed. Hence, point No.1 is answered in the **affirmative**.

10. Point No.2:- For the above discussion, I proceed to pass the following;

ORDER

IA No.IX U/O.6 Rule 17 of CPC filed by the defendants is hereby allowed subject to payment of cost of Rs.400/-.

The defendants are permitted to amend the written statement as prayed in the application.

*(Dictated to the Stenographer directly on computer corrected and then pronounced by me in the open Court on **21st day of January, 2019.**)*

(B.G.SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

**(Order pronounced in the open
court vide separate order)**

ORDER

**IA No.IX U/O.6 Rule 17 of CPC
filed by the defendants is hereby**

**allowed subject to payment of cost
of Rs.400/-.**

**The defendants are permitted to
amend the written statement as
prayed in the application.**

R/by 01-02-2019.

Civil Judge & JMFC.,
Harapanahalli.