

KAVP500002032018



**IN THE COURT OF HON'BLE ADDL. SENIOR CIVIL
JUDGE AND JMFC, SINDAGI
AT: SINDAGI.**

Present – Shri. Abdul Rahiman .A. Mulla
B.A.L,LL.B.(Hon's)

Dated 18th day of September, 2024

O.S.NO.17/2018

Plaintiff/s :

Annappagouda S/o. Malakanna Guggari,

// Versus //

Defendant/s :

Siddappa S/o Gurappa Bammanajogi,

I.A.No.6

Applicant/s:

1. Shivanand S/o. Siddappa Bammanajogi,

(R/by Sri. N.S.P., Adv.,)

Vs.

Opponent :

1. Annappagouda S/o. Malakanna Guggari,

(R/by Sri. S.G.K., Adv.,)

1.	Provision under which the application is filed	U/o.16 Rule 17 of CPC
2.	Relief sought for	For amendment of written statement
3.	The date on which application is filed	09-08-2023
4.	Number of the application	I.A.No.6
5.	The date on which objections are filed by different opponents	30-08-2023
6.	The date on which orders were passed on said application	18-09-2024

**:-ORDERS ON I.A.No.6 FILED BY GPA HOLDER OF
DEFENDANT U/O.16 RULE 17 OF CPC :-**

1. The present suit is filed by plaintiff against defendant for the relief of declaration and injunction and now when the case is posted for plaintiff's evidence, present application is filed by GPA holder of defendant praying this court to amend the written statement.

2. The proposed amendment is sought to add paragraph No.5A. after paragraph No.5 as

5A. The say of the plaintiff that they came to know on 18-2-2018 is totally false, after the sale deed in favour of the defendant, there were RTS proceedings between the defendant and

present plaintiff Sharanappa. The plaintiff has submitted objection for making of the entry on basis of the sale deed and he has appeared and well within knowledge of the pendency of the suit, passing of the decree etc., that the proceedings was of year 2011-2012. This plaintiff submitted objection for making entry of this defendant and inquiry was conducted by the Tahashildar Sindagi and on 13-08-2012 passed an order on the basis of the sale deed. The name of this defendant came to be entered, thus plaintiff is quite and aware and within the knowledge of this proceeding in the year 2012 itself, and cause of action arose on 18-02-2018 was to the knowledge of plaintiff himself is false.

5B. Thus, the suit brought on 2018 on 17-03-2018 is hopelessly barred by time, as they were aware in 2012 itself and article 58 of

Limitation Act prescribes cause of action will accrued, on first time in 2012, therefore the suit is not within 3 years from 2012 and as such is barred by its limitation under Article 58 or even under article 137, therefore the suit is liable to be dismissed on this count alone.

3. In the affidavit annexed to the application, GPA holder of defendant averred that, written statement was filed on 03-10-2018, wherein his father who was aged more than 60 years has not brought to the notice of his counsel regarding RTS proceedings, wherein in the year 2012, present plaintiff filed objections before Tahashildar and on 13-08-2012 name of defendant was entered in the record of rights. The trial of the suit has not commenced and proposed amendment is very much necessary to meet the case of defendant and amongst these grounds, prayed to allow the application.

4. Plaintiff filed objections to the application contending that, now matter is posted for further chief-examination of P.W.1 and at this stage of the case, defendant cannot seek amendment of written statement. Only to harass plaintiff, present application is filed by defendant. The proposed amendment will change the entire nature of defense. Already defendant has filed his detailed written statement and defendant knowing that his defense is untenable, hence he wants to change his defense, which is barred as per proviso of Order 6 Rule 17 of CPC and amongst these grounds, prayed to dismiss the application with heavy costs.

5. Heard. Perused the records.

6. The points that arise for my consideration is as under:

1) Whether defendant has made out sufficient grounds to allow the application?

2) What order?

7. My findings to the above points are as under:

Point No.1 : In the Affirmative.

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

:REASONS:

8. **POINT NO.1:** Admittedly in this case plaintiff examined himself as P.W.1 and when the case was posted for further chief-examination of P.W.1, as plaintiff attained age of majority, his guardianship was discharged and this application was filed by GPA holder of defendant for amendment of written statement.

9. It is the specific case of GPA holder of defendant that at the time of filing written statement his old age father failed in giving instructions to his counsel with respect to RTS proceedings and now he wants to amend the written statement. On the contrary, plaintiff contended that proposed

amendment will change the nature of suit and same is barred as per proviso of Order 6 Rule 17 of CPC.

10. No doubt, defendant has filed the application U/o.16 Rule 17 of CPC for amendment of written statement, but as per the law of the land, mere mentioning of wrong provision of law is not a ground to reject the application. The **Hon'ble Supreme Court of India** in decision reported in **(2006)6 SCC 498 between Baldev Singh and Others V/s. Manohar Singh and another** held that, *"an amendment of a plaint and amendment of written statement are not necessarily governed by exactly the same principle. Adding a new ground of defense or substituting or altering a defense does not raise the same problem as adding, altering or substituting a new cause of action. Therefore inconsistency pleas can be raised by defendant in written statement although the same may not be permissible in the case of plaint"*.

11. The ratio laid down in above said decision is aptly applicable case in hand because it appears that due to old age of defendant, he could not include the contentions as sought in proposed amendment to be included in written statement. Further it appears that the proposed amendment will not change the nature of suit as contended by plaintiff in his objections because defendant is not taking away admissions from his written statement, but he is now taking the plea of RTS proceedings and limitation.

12. Further, if at all the proposed amendment is allowed, plaintiff will get an opportunity to file his re-joinder, which will no way harm his case. If the proposed amendment is not allowed, it will lead to multiplicity of proceedings and defendant would be deprived of his right. Further, as per the ratio laid down in above said decision, proviso to Order 6 Rule 17 of CPC confers wide power and unfettered discretion to the court to allow an amendment of

written statement at any stage of the proceedings. Hence, objections raised by plaintiff does not hold any water. Sufficient grounds are made out by defendant to allow the application. Hence, for the above said reasons I answer **Point No.1 in the Affirmative.**

13. **Point No.2:** For the above reasonings and findings given to Point No.1, I proceed to pass following.

:ORDER:

I.A.No.6 filed by defendant U/o.16 Rule 17 of CPC is hereby allowed on payment of cost of Rs.400/-.

Defendant is hereby directed to amend written statement within 14 days from the date of this order.

(Dictated to the stenographer directly on computer, typed by him, corrected, signed by me and then pronounced in open court on 18th day of September, 2024).

**(Abdul Rahiman .A. Mulla)
Addl. Sr. Civil Judge & JMFC
Sindagi.**