

Order Below Exh. 127 in RCS No. 21 /2009
(Smt. Gangawwa @ Shanta Ankalagi Vs. Annappa Revur and others)
(CNR NO.MHSN08000092-2009)

This application is filed under Order 6 Rule 17 of the Code of Civil Procedure filed by the plaintiff for amendment in the pleading.

2. Ld. Advocate Shri. J. B. Patil submitted that, the plaintiff has given her family tree in paragraph 2 of his plaint is true and correct. However, the subsequent amendment carried out in para 4(A) of the plaint is ambiguous. According to him Basawwa is the only wife of late Mallappa. Therefore there is no reason to call Basavva as the first wife of the Mallapaa. But it is mentioned in the plaint. Further he submitted that, the plaintiffs father namely Mallappa has married with Basavva but actually Mallappa never performed second marriage and Chanawwa is not the mother of the plaintiff. But she is plaintiffs aunt and mother of defendant Annappa and Pargonda. Therefore, he submitted that the following pleadings in paragraph 4(A) of the plaint needs to be deleted and the following pleadings is to be incorporated in that place.

‘ त्याची पहिली पत्नी ही बसव्वा ही दि. ०७/१०/१९५३ रोजी मयत झाली. त्यावर वादीचे वडील मल्लाप्पा यांनी वादीची आई चन्नाव्वा यांच्याशी कायदेशीर विवाह केला व त्या विवाह संबंधातून वादी ही एकुलती एक मुलगी जन्मली. ’

हा मजकूर वगळून त्या जागी

‘ त्याची पत्नी ही बसव्वा ता. ०७/१०/१९५३ रोजी मयत झाली. त्यांना वादी ही एकुलती मुलगी जन्मली. ’

हा मजकूर नमूद करावा.

3. He further submitted that the said amendment is technical and unavoidable. The said amendment is necessary to avoid ambiguity in pleading. Therefore, if the said amendment is not allowed then, the plaintiff will suffer irreparable loss. Hence submitted to allow his application.

4. On the other hand, Ld. Advocate Shri. Karajgar for defendant No. 7 filed his say at Exh. 130 and submitted that, the application is false and illegal. According to him the amendment sought to be deleted is incorporated by plaintiff herself as per application at Exh. 34 (corrected Exh. 42) dated 19/09/2011. The present defendant opposed the said application by filing their say on 16/11/2012 vide Exh. 46. The said amendment is allowed on 18/03/2013 and since then the plaintiffs was aware about the pleading incorporated by her by seeking amendment vide Exh. 34 (corrected Exh. 42). Further the plaintiffs also mentioned that plaintiffs father Mallappa has performed second marriage with plaintiffs mother namely Chanawwa. Therefore, as per the amendment application plaintiffs came with the positive case that after the death of the first wife namely Basawwa, the plaintiffs father performed second marriage.

5. He further submitted that the present defendant taken his defence that after the death of the first wife of the plaintiffs father he has performed second marriage with defendant No. 7. Therefore the plaintiffs seeking the amendment which is inconsistent with their pleading which have been incorporated by themselves.

6. He further submitted that, the defendant filed their written statement on 23/01/2010 and after filing the written statement the plaintiff has filed amendment application vide Exh. 34. Prior to that issues are framed on 29/09/2009 and those are recasted on 09/03/2011.

7. Further he submitted that, as the interim injunction is granted in sister suit bearing RCC No. 35/2009 and matter is time bound for hearing within 1 year, therefore the plaintiffs wants to prolong the matter to cause the delay. Therefore, he submitted that, the application be rejected. Only the defendant No. 7 has contested the application. The defendants No. 1 & 2 have not filed their say to this application

8. Heard both sides. Perused record and documents on record. I have considered following points for determination and recorded my findings thereon with reasons mentioned as follows:-

Sr. No.	Points	Findings
1.	Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between parties ?	No.
2.	Whether the plaintiffs inspite of due diligence could not have raised the matter before the commencement of trial?	No.
3.	What order ?	As per final order.

REASONS

As to Point Nos. 1 and 2 :-

9. As per the provision of Order VI Rule 17 of the Code of Civil Procedure, the court may at any stage of the proceeding 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 the party could not have raised the matter before the commencement of trial.

10. In the present case, the issues are framed on 29/09/2009. Those are recasted on 09/03/2011. Thereafter, the matter is posted for evidence to be lead by the parties. Again the issues are recasted on 04/02/2019 and 16/09/2019. Thereafter, the matter is pending for the applications for deciding interim applications at Exh. 105 and 110.

11. Now coming to the facts of the application, it appears that the plaintiffs have filed the suit for partition on 01/01/2009. As per application at Exh. 34 (corrected Exh. 42) the plaintiffs sought the amendment in para 4(A) of the plaint and incorporated the above said pleading about death of first wife namely Basawwa on 07/10/1953 and thereafter plaintiffs father Mallappa had performed second legal marriage with the plaintiffs mother namely Chanawwa. The said application is allowed on 18/03/2013. Accordingly the amendment is carried out by the plaintiff. Therefore it appear that plaintiff herself sought for the amendment of above said fact in the year 2013 and thereafter more than 10 years filed this application for withdrawing the said pleading and amend it as late Basawwa is the only wife of the plaintiffs father and they have only daughter i.e. plaintiff.

12. Further it appears that, the plaintiffs have not mentioned any reason as to why she has incorporated the first amendment as per Exh. 34 (corrected Exh. 42) and now only seeking withdrawing the said amendment by saying that, plaintiffs father has never performed second marriage. Further the plaintiffs submitted that, the family tree given in

para 2 in plain is true. In the said family tree Basawwa is shown as the wife of Mallappa and Chanawwa is shown as the wife of Veerbhadra. Then why the plaintiff sought the amendment as per application at Exh. 34. On perusal of application at Exh. 34 which is renumbered as Exh. 42 dated 19/09/2011 it appears that, plaintiff herself stated that, Mallappa has first wife namely Basawwa and after her death on 07/10/1953 her father has performed the marriage with Channawwa i.e. plaintiffs mother. Therefore the amendment sought by the plaintiffs is against the previous pleading of the plaintiff which was not in the original plaint but incorporated by amendment as per application at Exh. 34 (42).

13. The learned advocate for the defendant No. 7 has come with the defence that, Mallappa's first wife is namely Basawwa and second wife namely Gurawwa @ Gurubai i.e. defendant No. 7. Plaintiff is the daughter of the Mallappa and Basawwa. After the death of the plaintiffs mother late Mallappa has performed second marriage with the defendant No. 7 and thereafter he ousted the defendant No. 7 from his house. Therefore according to learned advocate for the defendant No. 7 she is the legally wedded wife of late Mallappa.

14. The learned advocate for the defendant No. 7 relied upon the decision given in case of **Kamala Bala Vishwas Vs. Chandsarkar** reported in **AIR 1996 Calcutta 81** where in it is held *“that the amendment in plaint sought at the stage of appeal where no explanation afford as to delay in making prayer and no explanation as to why disputed facts were not introduced by amendment at this stage of trial. Therefore deliberate neglect to introduce such amendment at trial and new case sought to be set by the plaintiffs which runs counter to earlier case and therefore rejection of application is proper.”* He further relied upon decision given in case of **Dilip Kaur and another Vs. Major Sing and others** reported in

1996 PH. 107. Wherein it is observed that, *“inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegation of facts with would not be allowed to be incorporated by means of amendment.”* Further it is observed that, *“proposed amendment should not cause prejudice to other side which can not be compensated by means of cost.”* Further it is observed that, *“no amendment should be allowed which amounts to or results in defeating a legal right to opposite party on account of laps of time.”* These principles are given in the judgment of Hon’ble Supreme Court reported in AIR 1967 SC 96.

15. By keeping above said observation in mind and considering the facts in present case the plaintiffs incorporated the theory of second marriage of plaintiffs father with Chanawwa by making amendment application. The defendants came with the case that the plaintiff is the daughter of first wife of Mallappa namely Basawwa and after death of Basawwa the plaintiffs father has performed second marriage with the defendant No. 7. Therefore considering these facts of the case it appears that, the plaintiffs are trying to withdraw the admission of second marriage of plaintiffs father and also seeking deletion of fact of second marriage of plaintiffs father which is incorporated by the plaintiff herself. Whether the plaintiffs father has performed second marriage with Chanawwa or Gourawwa would be the dispute decided after the trial by leading cogent evidence to that effect but the plaintiff can not stand on two different footings at the same time. The plaintiffs herself given the admission of second marriage after the death of Basawwa and now she wants to withdraw that admission by incorporating that the plaintiffs father had never performed second marriage which is the defence of the defendant No. 7 that she is the second wife of late Mallappa. Therefore, considering the facts of the case and principles mentioned above, I am of

the opinion that, there is no explanation about why the plaintiff has sought the initial amendment of second marriage and now why they are withdrawing these facts of second marriage. Further there is no explanation about such a delay for filing the application i.e. after 10 years of first amendment. If the said amendment is allowed then the fact of admission of second marriage of the plaintiffs father would be allowed to be withdrawn by the plaintiff by this order and it would cause prejudice to the case of defendant No. 7. Further plaintiffs have not submitted anything about why they could not raise the matter inspite of due diligence as the plaintiffs herself sought the amendments before 10 years before framing of issues. In these circumstances and considering above reasons, I answer the point No. 1 & 2 in negative.

As the point No. 3

16. Considering the answers given to point No. 1 & 2 in answer to point No. 3, I pass the following order.

ORDER

1. Application at Exh. 127 is hereby rejected.
2. Cost shall in main cause.

(Dictated and pronounced in open Court)

Jath
Date: 25/04/2024

(Amarjeet B. Jadhav)
Joint Civil Judge, Junior Division,
Jath.

CERTIFICATE

I affirm that the contents of this P.D.F file order/judgment are same word for word as per original order.

Name of steno : Shri. S. A. Jamadar
(Stenographer Grade – III)

Name of court : Shri. Amarjeet B. Jadhav,
Jt. C.J.J.D.& J.M.F.C., Jath,

Order Date : 25.04.2024

Judgment/order signed
by Presiding Officer on : 25.04.2024

Judgment/order
uploaded on : 10.05.2024