



CNR: KAHC010166082024

NC: 2026:KHC:45982
WP No. 10159 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.10159 OF 2024 (GM-CPC)

BETWEEN:

MR. RIAZ PASHA
S/O LATE SHAI ANWAR PASHA,
AGED ABOUT 48 YEARS,
R/AT NO.1, HASB,
KATHA NO.591, 1ST CROSS,
1ST MAIN ROAD, JYOTHINAGAR,
WARD NO.87, ANNASANDRA PALYA,
K.R. PURAM, BENGALURU-560017.

...PETITIONER

(BY SRI. K.S. MALLIKARJUNAIAH, ADVOCATE)

AND:

SRI RAMESH
S/O GANGAIAH,
AGED ABOUT 48 YEARS,
R/AT NO.6 TEMPLE ROAD,
REDDY PLAYA, BEHIND HAL
HOSPITAL ROAD,
BENGALURU-560017.

...RESPONDENT

(BY SRI. SHIVARUDRAPPA SHETKAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 23.01.2024 PASSED BY PRINCIPAL CIVIL JUDGE BENGALURU RURAL DISTRICT BENGALURU IN O.S.NO.1011/2013 ON THE APPLICATION FILED UNDER ORDER VI RULE 17 R/W 151 OF CPC VIDE ANNEXURE-A AND ETC.



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THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL ORDER

1. Impugning the order dated 23.01.2024 passed on I.A. No.IV in O.S. No.1011/2013 on the file of the Principal Civil Judge, Bengaluru Rural District, Bengaluru (hereinafter referred to as the "Trial Court" for short) whereby the application filed by the plaintiff (petitioner) under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 [**CPC**] seeking amendment of the plaint, came to be dismissed.

Brief facts:

2. The petitioner instituted O.S. No.1011/2013 seeking the relief of permanent injunction, restraining the defendant (respondent) from interfering with his possession over the suit schedule property. The defendant entered appearance and filed his written statement on 26.08.2013, specifically denying the plaintiff's title to the suit schedule property and asserting title in his mother. Issues were framed thereafter on 13.01.2016, the plaintiff filed his evidence by



way of affidavit and marked documents, and the matter was posted for cross-examination of PW.1 and at that stage, the plaintiff filed I.A. No.IV under Order VI Rule 17 read with Section 151 CPC seeking amendment of the plaint. By the proposed amendment, the plaintiff sought to introduce further pleadings relating to his title and specific relief of declaration that he is the absolute owner of the suit schedule property by virtue of the sale deed dated 18.04.2013, together with consequential relief of mandatory injunction directing the defendant to hand over possession of the suit schedule property.

Submissions

3. Learned counsel appearing for the petitioner contends that the proposed amendment was necessary for the effective adjudication of the dispute between the parties. It is contended that the defendant in his written statement had set up a rival title in respect of the property and denied plaintiff's title. The plaintiff asserted that he had already pleaded derivation of his title in the plaint and that the proposed amendment was sought to properly address the controversy and avoid multiplicity of proceedings.



4. Learned counsel appearing for the respondent opposed the application contending that the proposed amendment was barred by limitation. According to the respondent, the suit has been instituted on 20.07.2013 and written statement denying the petitioner's title has been filed on 26.08.2013, whereas the application seeking to introduce relief of declaration was filed only on 20.12.2021. It is further contended that the trial had already commenced and the case was posted for cross-examination of PW.1. The respondent therefore contends that the petitioner had failed to establish the requisite due diligence and the proposed amendment would change the nature of the suit from one bare injunction to declaration and possession and would amount to filling up the *lacuna* in plaintiff's case.

Reasons and conclusion

5. The Trial Court, upon consideration of the pleadings on record, rejected the application on two grounds: First, it held that the plaintiff was seeking to introduce a relief of declaration of title on 20.12.2021 and that the said relief was barred by limitation under Article 58 of the Limitation Act, 1963 [**Act**]. Secondly, the Trial Court held that, since the trial had already commenced and



the matter was posted for cross-examination of PW.1, the proviso to Order VI Rule 17 CPC required the plaintiff to demonstrate that despite the exercise of due diligence, the proposed amendment could not have been sought before commencement of trial. The Trial Court found that the plaintiff has not stated in the affidavit any reason explaining why the amendment could not have been sought earlier and therefore, held that the requirement of due diligence has not been satisfied and dismissed I.A. No.IV.

6. The Order VI Rule 17 of CPC empowers the Court, at the stage of the proceedings, to allow either party to alter or amend the pleadings in such manner and on such terms as may be just, and further provides that all such amendments shall be allowed as may be necessary for the purpose of determining the real questions in controversy between the parties.

7. The proviso, however, places a restriction on the exercise of such power after the commencement of trial and mandates that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that, despite



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the exercise of due diligence, the party could not have raised the matter before commencement of trial.

8. In the instant case, the petitioner instituted the suit seeking relief of permanent injunction. The cause of action pleaded in the plaint arose on 25.06.2013, on the allegation that the defendant was attempting to interfere with and dispossess the plaintiff from the suit schedule property. The suit was, therefore, founded on the alleged threat to the plaintiff's possession and was instituted seeking the relief of permanent injunction.

9. The defendant, in his written statement, specifically denied the plaintiff's title and contended that his mother was the absolute owner of the suit schedule property under a registered Sale Deed dated 27.11.1987. Thus, the dispute regarding the plaintiff's title was brought on record at the earliest of the proceedings, upon such denial on 26.08.2013. Thereafter, the issues were framed in the year 2016, the plaintiff led evidence and marked documents, and it was only thereafter, when the matter had reached the stage of cross-examination of PW.1, that the plaintiff filed the application seeking amendment of the plaint.



10. By the proposed amendment, the plaintiff seeks to introduce a substantive relief of declaration of title, namely, a declaration that he is the absolute owner of the suit schedule property by virtue of the Sale Deed dated 18.04.2013, together with a consequential relief directing that the defendant to hand over the possession of the suit schedule property. Thus, while the original suit was instituted seeking the relief of permanent injunction, the proposed amendment seeks to introduce substantive reliefs of declaration of title and recovery of possession.

11. The material circumstance is that the alleged cause of action relating to the plaintiff's title, had arisen, at the latest, when the defendant specifically denied the plaintiff's title in the written statement in the year 2013 and stood crystallized when the issues were framed in the year 2016. Nevertheless, the application seeking amendment to incorporate the relief of declaration came to be filed only in the year 2021, nearly eight years after the institution of the suit and several years after the defendant's denial of the plaintiff's title.



12. Article 58 of the Act prescribes a period of three years for a suit to obtain any other declaration, with the period commencing from the date when the right to sue first accrues. Section 3 of the Act further mandates that every suit instituted, appeal preferred, or application made after the prescribed period shall be dismissed, subject to the provisions contained in Sections 4 to 24, even though limitation has not been pleaded as a defence.

13. The contention of the petitioner that there was a change of counsel, which constituted the reason for seeking the amendment at a belated stage, also does not dilute the rigour of the statutory bar contained under the Act. The prescribed period of limitation cannot be circumvented merely by seeking to introduce a declaratory relief by way of an amendment.

14. Once the defendant had specifically denied the plaintiff's title in his written statement, the plaintiff was aware of the necessity, if any, of seeking a declaration. No satisfactory explanation has been forthcoming as to why declaratory relief could not have been sought before the commencement of trial.



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15. The Apex Court, in the case of **Basavaraj Vs. Indira and others¹** (*Basavaraj*), has made it clear that the requirement of due diligence is not an empty formality and that an amendment after the commencement of trial cannot be claimed as a matter of right. The Apex Court, relying upon the decision in **M. Revanna Vs. Anjanamma (Dead) by legal representatives and others²** held at paragraph No.9 as under

“9. This Court in M. Revanna v. Anjanamma (Dead) by legal representatives and others, (2019) 4 SCC 332 opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order VI Rule 17 C.P.C. prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No.7 thereof is extracted below:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The

¹ Civil Appeal No.2886/2012 D.D. 29.02.2024

² (2019) 4 SCC 332



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proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

(emphasis supplied)

16. The Apex Court held that leave to amend may be refused if it totally introduces a totally different, new and inconsistent case or challenges the fundamental character of the suit and further held that the burden lies on the person seeking amendment after the commencement of trial to show that, in spite of due diligence, such



an amendment could not have been sought earlier and that there can be no dispute that an amendment cannot be claimed as a matter of right. In the present case, the proposed amendment seeks to introduce a declaration of title and consequential relief of possession. Thus, the proposed amendment is not merely formal or clarificatory, but seeks to introduce substantive reliefs, which were not originally sought.

17. The reliance placed on by the learned counsel for the petitioner in the case of ***M. Nagesh Suvarna Vs. Sri Narayana***³ (*M. Nagesh Suvarna*) to contend that the delay in seeking an amendment has to be considered having regard to the stage of proceedings and that an amendment may be permitted where the basic structure of the suit is not altered, does not advance the petitioner's case in the facts and circumstances obtaining herein.

18. The question is not merely the length of the delay from the date of institution of the suit, but whether, after the commencement of trial, the petitioner has established due diligence and whether the relief sought to be introduced is otherwise legally sustainable.

³ ILR 2016 KAR 4252



19. In the present case, the proposed amendment is *prima facie* beyond limitation and the petitioner has failed to establish why such relief could not have been sought earlier. In the circumstances, this Court is of the considered view that the petitioner has failed to establish that, despite due diligence, the relief of declaration and consequential possession could not have been sought before the commencement of trial. The Trial Court, having considered the statutory requirement under the proviso to Order VI Rule 17 CPC, has, therefore, rightly declined to allow the proposed amendment.

20. The Trial Court, having considered this aspect, rejected I.A. No.IV and committed no error warranting any interference under Article 227 of the Constitution of India. Accordingly, the writ petition is ***dismissed***. The impugned order dated 23.01.2024 passed on I.A. No.IV in O.S. No.1011/2013 on the file of the Principal Civil Judge, Bengaluru Rural District, Bengaluru is ***affirmed***.

Sd/-

JUSTICE K.S. HEMALEKHA