IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 30623 OF 2024 (GM-CPC)

BETWEEN:

SMT. PARVATHAMMA.K.Y.
W/O SRI. JAYACHANDRA SHETTY,
AGED ABOUT 62 YEARS,
R/AT NO.97, 1ST MAIN,
2ND CROSS, OPP SAI BABA TEMPLE,
7TH BLOCK, KORAMANGALA,
BENGALURU-560 095.

...PETITIONER

(BY SRI. SUNIL KUMAR.B.N., ADVOCATE)

AND:

1. SRI. Y.PRAKASH
S/O LATE YELLAPPA,
AGED ABOUT 71 YEARS,
R/O NO.112, 1ST CROSS,
1ST MAIN, DOMMALUR,
BENGALURU-560 086.

2. SRI. MUKESH SOLANKI
S/O GOVINDAN LAL,
AGED ABOUT 42 YEARS,
R/O NO.7, 80 FEET ROAD,
1ST MAIN, KORAMANGALA,
BENGALURU-560 095.

3. SRI. R.VENKATESH
S/O LATE C.RAMAIAH,
AGED ABOUT 55 YEARS,
R/O NO.265, 1ST B MAIN ROAD,
8TH BLOCK, KORAMANGALA,
BENGALURU-560 095.

Digitally signed by
JAI JYOTHI J
Location: HIGH
COURT OF
KARNATAKA

…RESPONDENTS

(BY SRI. SRIKANTH.S., ADVOCATE FOR R3;
R1 & R2-SERVED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 24.08.2024, PASSED BY THE II ADDL. CIVIL JUDGE, BENGALURU RURAL DISTRICT, AT BENGALURU IN OS NO. 1338/2016, VIDE ANNEXURE-A AND CONSEQUENTLY ALLOW I.A NO.2 FILED BY THE PETITIONER.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MS. JUSTICE TARA VITASTA GANJU**

ORAL ORDER

1. The present petition seeks to challenge an order dated 24.08.2024 passed in I.A.No.II in O.S.No.1338/2016 by the II Additional Civil Judge, Bengaluru Rural District, Bengaluru (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, the application filed under Order 6 Rule 17 of the CPC was dismissed by the learned Trial Court.

2. Learned counsel for the petitioner/plaintiff submits that a suit was filed for injunction. During the pendency of the suit, the respondents/defendants trespassed and took over possession of the schedule property. He thus submits

that in view of these changed circumstances, the petitioner/plaintiff was forced to file the application under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'the CPC') seeking an amendment in the plaint bringing out the subsequent events on record. However, it is contended that the learned Trial Court has dismissed this application without examining the reason for the amendment.

3. Learned counsel for the respondents/defendants on the other hand contends that no fresh pleading has been introduced in the application and that the pleadings in the application already form part of the plaint. Reliance in this behalf is placed on paragraph 10 of the Impugned Order. In addition, learned counsel submits that no due diligence as is requisite under Order VI Rule 17 of the CPC has been set out in the application. Reliance in this behalf is placed on a judgment of the Coordinate Bench in ***K.Nagaraj and others Vs. C.Nataraja and another[1].*** Accordingly, he

[1] WP No.18876/2023 decided on 28.08.2023

submits that the learned Trial Court has rightly dismissed the application.

4. This Court has examined the record. The suit was filed on 11.11.2026. The prayers in the plaint as well as the schedule properties are set out below:-

> *"WHEREFORE, the plaintiff prays that, this Hon'ble Court be pleased to pass a Judgment and Decree of Permanent Injunction in favour of the plaintiff and against the Defendant:*
> *(a) Restraining the Defendant from interfering with the peaceful possession. and enjoyment of the plaintiff over the suit schedule property; AND*
> *(b) Grant any other relief or reliefs that this Hon'ble Court may deem fit to grant in the circumstances of the case including awarding of cost of this proceeding in the interest of justice and equity.*
>
> ***SCHEDULE***
>
> *All that piece and parcel of the property bearing Site No.84, Katha No.43, Property assessment No.43, Situated at Naganathpura village, begur hobli, Bangalore South Taluk, Measuring east to west 30 feet, North to south 40 feet, totally measuring 1200 Sq.ft and bounded on:*
>
> *East by: Site No.5*
> *West by : Site No.83*
> *North by : Road*
> *South by : Site No.97"*
>
> [Emphasis Supplied]

5. This Court has examined the application under Order 6 Rule 17 of the CPC. The application sets out that during the pendency of the suit, the petitioner/plaintiff visited the property in the year 2022 and she learnt that defendant No.3 had put up a shed in the suit schedule property and that the defendant No.3 is trying to sell the suit schedule property. Thus, two amendments are sought for. Firstly, to insert an additional paragraph setting out this new circumstance and secondly to add new prayers.

5.1. In his affidavit, the petitioner/plaintiff has explained that the event is a subsequent event that has occurred in the year 2022. The relevant extract of the application as well as affidavit are set out below:

> "***APPLICATION UNDER ORDER VI RULE 17 OF CODE OF CIVIL PROCEDURE READ WITH SECTION 151 OF CODE OF CIVIL PROCEDURE***
>
> *That for the reasons stated in the accompanying affidavit the plaintiff above named humbly prays that this Hon'ble Court be pleased to permit the plaintiff to amend the plaint as follows, in the interest of justice and equity.*
>
> *Proposed amendment sought for:*
>
> *01. To insert below para graph after para 17*

17 (a). During the pendency of the suit the plaintiff had visited the ***suit schedule property in the year 2022 and learnt that the defendant no.3 had put up the shed in the suit schedule property.*** *The plaintiff is not residing near the schedule property taking advantage of the same the defendant no.3 has put up the shed and in collusion of the concerned authority have got electricity connection.* ***Upon the strength of the alleged forged and fraudulent documents the defendant no.3 may sell/encumber the suit schedule property to third party,*** *it is just and necessary to allow the accompanying application in order to avoid the multiplicity of proceedings. The said amendment sought for is necessary to determine the real question in controversy between the parties.*

02. At Page 5 to insert new prayer in the prayer column after prayer

(a)

(aa) To declare that the plaintiff is the absolute owner of the suit schedule property.

(aaa) To direct the defendant No.3 to hand over the vacant possession of the Suit Schedule Property to the plaintiff.

(aaaa) Mandatory injunction, directing the defendant no.3 to demolish the shed constructed over the suit schedule property.

AFFIDAVIT

XXXX

01. XXXX

02.XXXX

03. I state that, during the pendency of the suit I had visited the suit schedule property in the year 2022 and learnt that the defendant no.3 had put up the shed in the suit schedule property. *I am not residing near* ***the schedule property taking advantage of the same the defendant no.3 has put***

> ***up the shed and in collusion of the concerned authority have got electricity connection.*** *Upon the strength of the alleged forged and fraudulent documents the defendant no.3 may sell/encumber the suit schedule property to third party, it is just and necessary to allow the accompanying application in order to avoid the multiplicity of proceedings. The said amendment sought for is necessary to determine the real question in controversy between the parties. I state that, the amendment now sought for by me does not take away any admission made by me in the above suit.*
>
> *04. I state that, now by this accompanying application I have sought for the relief of declaration, possession and mandatory injunction.* ***Due to the changed circumstance and also I have denied the title in which the defendant no.3 is claiming, the defendant no.3 upon the fraudulent and forged document has acquired the suit schedule property and may create/encumber the suit schedule property."***
>
> [Emphasis Supplied]

6. No doubt that the provisions of Order VI Rule 17 of CPC provide that when a trial is commenced, due diligence must be shown. However, where the applicant is relying on a subsequent event, and the subsequent event is necessary to avoid multiplicity of proceedings, it is incumbent for the averment to be examined. Whether or not the subsequent event in fact took place would be a matter to be proved in trial. The petitioner/plaintiff has in his application contended a change in circumstances at the subsequent stage and to

that extent such change could not possibly have been brought on record earlier. The proviso to Order VI Rule 17 of the CPC, in these circumstances, would not be applicable.

7. The argument of the respondents/defendants that the amendment is not necessary in view of para 12 of the plaint also cannot be sustained. An examination of paragraph No.12 of the plaint also shows that it references a creation of a fraudulent GPA with an intention to sell. However, the averments that have been set out in the application are not with relation to the fraudulent GPA. Paragraph No.12 of the plaint is set out below:

> *"12. The plaintiff submits that, the defendant No.1 have created a fraudulent and forged document i.e. General Power of Attorney dated 12.04.1993 with an intention to sell the schedule property and deceive the plaintiff right title and interest over the schedule property. All the defendant with an intention to cheat the plaintiff created the fraud documents."*
>
> [Emphasis Supplied]

8. The Supreme Court in ***Haramani Sahoo v. Lalita Nayak***[2]***,*** while considering the scope of amendment of

[2] 2026 SCC OnLine SC 2123

pleadings under Order VI Rule 17 of the CPC at the post-trial stage has held that an amendment sought after commencement of trial may be permitted where the applicant furnishes a sufficient explanation demonstrating that, despite due diligence, the matter could not have been raised earlier. In addition, it has been held that if the proposed amendment is necessary for effective adjudication of the real controversy without fundamentally altering the nature and character of the suit, the amendment ought to be allowed. The Supreme Court further held that where the proposed amendment bears a direct nexus with the existing controversy and the prejudice occasioned to the opposite party can be addressed by permitting additional pleadings and, where appropriate, imposing costs, the amendment may be allowed, subject to satisfaction of the statutory requirement of due diligence. The relevant extract is set out below:

> *"10.* ***A plain reading of the aforesaid provision makes it clear that Order VI Rule 17 of the CPC confers a discretionary power upon the Court to permit amendments which are necessary for determining the real questions in controversy between the***

parties. However, once the trial has commenced, the exercise of such power is subject to the additional requirement that the Court must be satisfied that despite due diligence, the party could not have raised the matter before the commencement of trial. The object of the provision is to enable the Court to effectively and completely adjudicate upon the dispute between the parties, while at the same time, ensuring that a party does not introduce at a belated stage, matters which could, with due diligence, have been raised earlier.

xxx *xxx* *xxx*

12. In the present case, there is no dispute that the application for amendment was filed after commencement of the trial and therefore, the proviso to Order VI Rule 17 of the CPC is attracted. The fact that the amendment was sought at a belated stage is, by itself, not determinative. The principal question is whether, the appellants have shown that despite due diligence, the matters now sought to be introduced could not have been raised before the commencement of the trial. The further question is whether the proposed amendment would fundamentally alter the nature and character of the suit.

13. As regards the requirement of due diligence, the original suit concerns the right, title and interest in and possession of the very property which forms the subject matter of the proposed amendment. The proposed pleading relating to the compromise decree passed in T.S. No. 105 of 1998 arises from the allegation that the said decree affects a portion of the very suit property, namely, Ac. 0.02 decimals comprised in Hal Plot No. 3371/4050. ***The case of the original plaintiff is that he was not a party to the said suit and was unaware of the compromise decree. It is stated that only upon obtaining certified copies of the plaint and final decree on 22.06.2020, did he come to know of the compromise in respect of suit plot No. 3371/4050 measuring Ac. 0.04 decimals along with other properties between Defendant No. 8 and others. It is further stated that the written statement filed by***

Defendant Nos. 9 and 10 did not disclose the source of title of their vendors.

13.1. The significance of these circumstances cannot be overlooked. The proposed amendment is not founded upon a transaction or an event wholly unconnected with the subject matter of the suit, but upon a subsequent discovery of a decree which, according to the original plaintiff, has a bearing upon the title to a portion of the very property in dispute*. The record indicating that certified copies of the plaint and final decree were obtained on 22.06.2020 is a relevant circumstance in assessing the plea of due diligence.* ***At this stage, it is not necessary for the Court to finally determine whether the plaintiff's assertion regarding the date of knowledge is ultimately correct. What is required is to examine whether sufficient explanation has been furnished for not raising the matter before commencement of the trial.***

13.2. Having regard to the aforesaid circumstances, we are of the view that the explanation furnished by the appellants cannot, at this stage, be characterised as a mere omission, inadvertence or negligence. The subsequent discovery of the compromise proceedings, coupled with the assertion that the original plaintiff was not a party to those proceedings and that the source of title of the vendors was not disclosed in the written statement, ***provides a sufficient basis for accepting the plea of due diligence for the purposes of the proviso to Order VI Rule 17 of the CPC. The statutory requirement is therefore satisfied.***

xxx xxx xxx

14.1. ***The real inquiry is whether the amendment introduces a distinct and independent controversy having no connection with the original cause of action, or whether it merely brings on record additional facts and consequential reliefs having a direct nexus with the existing controversy.*** *On the facts of the present case, the proposed amendment falls within the latter category.* ***The subject matter of the proposed amendment and the original suit substantially overlap, and the adjudication of the proposed issue would have a direct bearing upon***

the title and possession claimed in respect of the suit property.

xxx *xxx* *xxx*

19. The objection as to prejudice also does not warrant rejection of the amendment. The prejudice relied upon by the respondents principally arises from the additional factual and legal issues which they would now be required to meet. Such prejudice can adequately be addressed by permitting the respondents to file an additional written statement and where necessary, by imposing appropriate costs. The mere fact that an amendment requires the opposite party to meet additional pleadings or issues does not, by itself, warrant refusal of the amendment where the amendment is necessary for a complete and effective adjudication of the controversy."

[Emphasis Supplied]

9. As stated above, the amendment sought to be brought on record is a subsequent event. Thus, no amount of due diligence could have made it possible for the petitioner to seek it earlier.

10. In any event, given the settled position in law that even post-trial amendments may be allowed with a view to do substantive justice qua the parties and for the reasons stated above, the Impugned Order cannot be sustained and accordingly it is set aside. The application filed under Order 6 Rule 17 of the CPC is allowed.

11. , The writ petition is ***allowed*** in the aforegoing terms. All pending applications stand closed.

12. The respondents/defendants shall however have the liberty to file their amended written statement and take all objections in this regard.

13. It is clarified that this Court has not examined on the merits of the matter. All rights and contentions of the parties are left open to be decided by the learned Trial Court.

Digitally signed by
TARA VITASTA GANJU
Location: HIGH COURT
OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

YN/List No.: 1 Sl No.: 40