

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28th DAY OF SEPTEMBER, 2018

BEFORE

THE HON' BLE MR. JUSTICE S.G. PANDIT

WRIT PETITION No.18523/2015 (GM-CPC)

BETWEEN:

1. Saraswathi,
Aged about 74 years,
W/o. late T. Hanumaiah,
2. Dakshayani,
Aged about 50 years,
W/o. Rajanna,
3. Hamsashri,
Aged about 30 years,
D/o. Rajanna,

Petitioners 1 to 3 are
Residents of Chikkabidarakallu,
Dasanapura Hobli,
Nagasandra Post,
Bangalore North – 560 073.

... Petitioners

(By Sri. R. Chandranna, Advocate)

AND:

1. H.D. Hanumantharayappa,
Aged about 49 years,
S/o. late Ganganna,
R/o. Habbathanahalli,
Kasaba Hobli,
Tumkur Taluk,
Tumkur District – 572 101.
2. G.B. Bheemaiah,
Aged about 70 years,
S/o. Bheemaiah,
R/o. Subhasnagar,
Gubbi Town and Taluk,
Tumkur District.

....Respondents

(By Sri. M.B. Chandrachooda, Advocate)

This Writ Petition is filed under Article 227 of the constitution of India praying to quash the order dated 29.10.2014 Annex.A made on I.A. filed by the petitioners under Order VI Rule 17 Code of Civil Procedure in O.S.No.6/2011 on the file of the Senior Civil Judge, at Gubbi and allow the said application filed by the petitioners under Order VI Rule 17 of Code of Civil Procedure for amendment of the plaint, etc.

This Writ Petition coming on for '*Preliminary Hearing*' in 'B' Group this day, the court made the following:

ORDER

The petitioner is before this Court under Article 227 of the Constitution of India assailing the order dated 29.10.2014 in O.S.No.06.2011 on the file of the Senior Civil Judge, Gubbi.

2. The petitioners are plaintiffs and the respondents are defendants in O.S.No.06/2011 filed for seeking judgment and decree of specific performance of agreement to sale dated 29.10.2007. The plaintiff filed application under Order VI Rule 17 of CPC to add that the 1st respondent has sold 5 guntas of land out of the suit schedule property by sale deed dated 12.10.2010 and sought additional prayer to declare that the said sale deed is null and void and for mandatory injunction and possession. The said application was resisted by the defendants by filing objection contending that if amendment is allowed, it would change the nature of the suit and also it introduces new cause of action. The trial

Court by its order dated 29.10.2014 rejected the said application which is impugned in this writ petition.

3. Heard the learned counsel for the petitioners and learned counsel for the respondents. Perused the writ papers.

4. The learned counsel for the petitioners submits that the application filed under Order VI Rule 17 of CPC is a pre trial amendment. The counsel for the petitioner further submits that the plaintiff filed the suit initially for Specific Performance of agreement dated 29.10.2007. The said suit was filed in the year 2011. After filing of the suit, it came to the knowledge of the plaintiffs that the 1st defendant has sold 5 guntas of land out of the suit schedule property under the sale deed dated 12.10.2010 in favour of the 2nd respondent - G.B.Bheemaiah. The plaintiffs intends to include the amendment with regard to sale made by the 1st defendant in favour of the 2nd

defendant under sale deed dated 12.10.2010 and also seeking prayer to declare that the sale deed dated 12.10.2010 is null and void and also seeking for mandatory injunction and for possession which according to the counsel for the plaintiff would not cause any prejudice to the defendants and would not change nature of the suit.

5. Per contra, the learned counsel for the respondents submits that if the amendment is allowed, it would change the nature of the suit from specific performance to that of declaration suit. Further it is the contention of the counsel for the respondents that the cause of action is different for seeking prayer as sought in the application.

6. The learned counsel for the respondent relies upon the decision of the Hon'ble Supreme Court in the case of *M/s.Revajeetu Builders and Developers v.*

M/s.Narayanaswamy and Sons reported in *AIR 2009 SC (Supp) 2897*, to contend on behalf of the 2nd respondent no prayer as sought in the amendment application would be maintainable against him.

7. The suit filed by the plaintiff is one for Specific Performance of agreement dated 29.10.2007. It is the case of the plaintiffs that the suit was filed on 09.11.2011. Subsequent to filing of the suit, it came to knowledge of the plaintiffs that the 1st defendant has sold 5 guntas of land out of the suit schedule property in favour of the 2nd defendant under sale deed dated 12.10.2010. The suit schedule property measures 1 acre, whereas the 1st defendant has sold 5 guntas in favour of 2nd defendant vendor dated 12.10.2010. The plaintiffs also sought prayer to declare that the said sale deed is null and void and also sought possession. Order VI Rule 17 of CPC provides for amendment of pleadings at any stage of the proceedings. If the application is made subsequent to

trial, the parties have to satisfy the Court that in spite of due diligence, the parties could not seek for amendment before commencement of the trial. Since it is a case of pre trial amendment and the purpose of allowing application for amendment is to minimize the litigation and to avoid multiplicity of proceedings, the trial Court ought to have allowed the application for amendment one of the other object of allowing amendment is to decide all and every issue involved in the suit. The 2nd respondent/2nd defendant was not original party to the suit, who was impleaded subsequently. The 2nd defendant did not challenge his impleadment in the suit. In my opinion, the amendment would be necessary for determination of entire issue in respect of the suit schedule property and controversy involved in the suit. The decision of the respondent i.e., AIR 2008 SC 2134 would have no application to the facts of the present case, since in the case on hand, out of the suit schedule property, 5 guntas

is sold by the 1st defendant in favour of the 2nd defendant under sale deed dated 12.10.2010, which means an interest is created in favour of the 2nd defendant in respect of the suit schedule property.

8. The decision relied upon by the defendant i.e., AIR 2009 SC (Supp) 2897, the Hon'ble Supreme Court has laid down basic principles to be taken into consideration while dealing with the application filed for amendment under Order VI Rule 17 of CPC. The first condition is that Court is to be satisfied as to such amendment is necessary for determining the real controversy and also further has to satisfy with regard to the prejudice or injustice likely to be caused to other side. In the case on hand from the material on record and from the narration of facts supra, the amendment sought is necessary to decide all and every issue involved in the suit. Further, as contended it would not change the nature of the suit. Moreover as stated above it is a pretrial amendment.

9. In my view, if the application is allowed, no prejudice would be caused to the defendants/respondents. On the other hand, they would get an opportunity to file additional written statement by taking all contentions which are available for them in law. Hence, I.A., under Order VI Rule 17 of CPC is allowed on costs of Rs.5000/-, which shall be paid to the defendants on the next date of hearing before the trial court. The petitioner is permitted to amend the plaint as sought for in the application.

Accordingly, the writ petition is *allowed*.

**Sd/-
JUDGE**

mr