
(1979) 02 KAR CK 0024
In the Karnataka High Court
Case No : CRP. 2884/78

Erappa and Another

APPELLANT

Vs

Seethamma

RESPONDENT

Date of Decision : 09-02-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1979) 2 KarLJ 39

Hon'ble Judges : Swami, J

Judgement

1. This revision petition is directed against the order dated 3-11-1978 passed by the learned Civil Judge, Chickballapur in O.S. No. 31 of 1978 dismissing the application I. A.No. XII filed by the defendants for amendment of the written statement.

2. The brief facts of the case are as follows: The respondent filed the suit for partition and possession of her share in the suit properties. The petitioners-defendants have filed the written statement contending that some of the suit properties are the self-acquired properties. They have stated in their written statement that item Nos. 1, 2 and 7 were self acquired properties. Subsequently, the defendants have filed I.A.No. XII seeking amendment to their written statement so as to add a plea that item Nos. 1,3,7,16,17,20,22,27,28 and 30 of the "A" schedule properties and the "B" schedule properties are the self-acquired properties. By this amendment, they also further wanted to delete item No. 2 being one of the self-acquired properties. This application was opposed by the respondent-plaintiff on the ground that the defendants are estopped from taking the plea as stated in their application on the ground that they have admitted in their written statement that except items 1,2, and 7 of the, suit schedule properties, other properties are joint family properties and therefore, the amendment sought for should be reflected. In support of the amendment sought for by the defendants, they also filed an affidavit stating that by oversight they failed to include the plea in the written statement and the amendment sought for is necessary and the same be allowed in the interest of justice.

3. The Civil Judge has rejected the said application only on the ground that there was an admission made, by the defendants in their earlier written statement and that admission was to the benefit of the plaintiff and therefore, the right of the plaintiff would be taken away if the amendment is allowed. In support of this reasoning, the learned Civil Judge has relied upon the decision of the Supreme Court in *Modi Spg. & Wvg. Mills v. Ladha Ram & Co*, AIR 1977 SC. 680.

4. It may be pointed out that the learned Civil Judge was not correct in holding that there was an admission made by the defendants in favour of the plaintiff. In the first instance, what the defendants stated in their written statement that items 1, 2 and 7 are the self-acquired properties; that does not mean that they have admitted that other properties are ancestral properties. As the suit is at the initial stage, the recording of the evidence has not yet commenced, the plea that the defendants wanted to include by amending their written statement cast the burden upon them and as such, it did not cause any prejudice to the plaintiff. That being so, the learned Civil Judge was in error in disallowing the amendment prayed for by the defendants. The decision of the Supreme Court referred to by the learned Civil Judge also does not apply to the facts of the present case because that was a case in which a categorical statement was made by the defendants in paras 25 and 26 of the written statement which gave certain advantage to the plaintiff. By way of amending the written statement, the defendants therein wanted to delete the entire Paragraphs 25 and 26 of the written statement. Under those circumstances, the Supreme Court held that the amendment should not be allowed so as to take away the benefit accrued to the plaintiff by reason of the earlier written statement. The position in the instant case is not similar to the one dealt with by the Supreme Court. When the defendants have specifically stated in the affidavit that there was a mistake on their part in not including the plea sought to be included by amendment, this aspect of the case ought to have been considered by the learned Civil Judge before rejecting the amendment sought for by the defendants. Further, the learned Civil Judge, during the course of the order, has even dealt with the merits of the proposed amendment as to whether the defendants can successfully establish the case sought to be introduced by the proposed amendment. This is a matter to be considered after the evidence is adduced and not at the stage of consideration of the application filed for amendment. After the amendment is allowed, the necessary issue will have to be framed in the suit and the evidence will have to be adduced by the parties on the issues framed in the suit and thereafter, it is to be found as to whether the plea raised by way of an amendment was established or not. Further, the said finding will be subject to scrutiny in the appeal preferred against the ultimate decree passed in the suit. Therefore, the merits of the amendment cannot at all be gone into at the stage, of consideration of the application for amendment. This is quite different from the question as to whether the amendment sought for is or is not necessary for the purpose of adjudicating the controversies between the parties. That being so, the amendment sought for by the defendants could not have been rejected as

long as it did not in any way cause prejudice to the other side and was necessary for adjudicating the controversies between the parties. In the instant case, as already pointed out, the suit being in the initial stage and by this plea, the plaintiff will not be put to any extra burden of proof as it is the defendants who have to prove the plea sought to be introduced by them by amendment and as such, there was no reason whatsoever for the Court below to reject the proposed amendment to the written statement. Consequently, the lower Court acted with material irregularity in rejecting the amendment application.

5. For the reasons stated above, this revision petition succeeds. The order of the Court below is set-aside and the application I.A. No. XII filed by the defendants for amendment of their written statement is allowed.