

(2015) 06 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 104485 of 2014 [GM-CPC]

Siddappa and Others

APPELLANT

Vs

Tangewwa Nagappa Hosur and Others

RESPONDENT

Date of Decision : 08-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (2015) 4 AKR 412

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Rekha Patil and M.G. Naganuri, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

B. Veerappa, J.—The defendants filed the above writ petition against the order dated 28.03.2014 on I.A. No. VI in O.S. No. 19/2012 allowing the application filed by plaintiff No. 3, under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short "CPC") to include three more properties to the plaint schedule.

2. Respondents 1 to 8, who are the plaintiffs, filed O.S. No. 19/2012 for partition and separate possession in respect of the suit schedule properties contending that all the suit schedule properties are the joint family properties and they are entitled to share. The present petitioners/defendants filed the written statement and resisted the plaint averments. When the matter was posted for further cross-examination of plaintiffs, plaintiff No. 3 filed an application under Order VI Rule 17 read with Section 151 of CPC, for amendment of plaint, to include three more house properties, viz., bearing VPC Nos. 402, 405 and 417, situated at Sankonatti village in Athani Taluk, Belagavi District, stating that after completion of examination of PW-1, they have filed the application for amendment of plaint stating that they are illiterate persons; they got the information that some house properties have not been included in the suit schedule and the same came to

their knowledge recently. Therefore, it is quite necessary, to elucidate the matter in dispute and determine the rights of the parties, the proposed amendments have been sought for. The proposed amendment is nothing but better particulars and clarification and also adding house properties in hotchpots, as it is a suit for partition and separate possession. The amendments sought in the application will not change the nature of the suit and no prejudice will be caused to the defendants, if the proposed amendment is allowed, etc.

3. The defendants filed objections to the said I.A. resisting the same and it is specifically denied in para No. 4 of the objections that VPC properties are not belonging to the family of the plaintiffs and defendants; it is also contended that the said VPC properties were belonging to the mother of defendant Nos. 1 to 4; that they are now standing in their names as absolute owners.

4. After considering the application and objections, learned Civil Judge, by the impugned order, dated 28.03.2014, has allowed the application holding that, on going through the plaint, except plaintiff Nos. 4, 6 and 7, rest of them are illiterates. As per the amended provisions of the Code of Civil Procedure, it is impermissible for the parties to amend their pleading, but in the case of suit for a partition, if some properties are left out, Court has to provide an opportunity to the parties to add those properties, as suit for partial partition is not maintainable. Accordingly, he has allowed the application on payment of cost of Rs. 1,000/- to be payable to the contesting defendants. Against the said order, the present writ petition is filed.

5. Smt. Rekha Patil, appearing on behalf of Sri. M.G. Naganuri, learned counsel for the petitioners, has contended that the impugned order passed by the trial court allowing the application for amendment is at a belated stage and cannot be allowed and that the application filed after the commencement of evidence is impermissible under the amended provisions of Order VI Rule 17 of CPC. The learned counsel also contended that the amendment sought for is in order to overcome the admissions made by PW-1 in the cross-examination. Therefore, the petitioners' counsel sought to set aside the impugned order.

6. The learned AGA sought to justify the impugned order.

7. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record.

8. It is not in dispute that the plaintiffs have filed a suit for partition and separate possession in respect of the suit schedule properties and the defendants filed the written statement. After completion of evidence of PW-1, the plaintiffs now have come forward with an application for amendment, to include three more house properties, stating that they are the joint family properties; by inadvertence, the same were not included.

9. The defendants filed objections to the said application for amendment, at one breath stated that the proposed properties are not belonging to joint family of

the plaintiffs and defendants and in another breath, state that the proposed properties belong to the mother of defendants 1 to 4 and they are standing in their names as absolute owners. If the plaintiffs are able to establish that the proposed properties, now sought to be included in the schedule, belong to joint family properties, they are entitled to a share. If they fail to establish the same, certainly they will not be entitled to any share. According to the defendants, as contended by them in their objections, that the properties belong to the mother of defendant Nos. 1 to 4 and they are standing in their names. After the death of their mother, now they become absolute owners. If that is so, it requires a detail trial.

10. While considering the provisions of Order VI Rule 17 of CPC, the Honb"le Apex Court in the case of Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, has held as under:-

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

15. This Court in the case of L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., , has held:

"It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

11. The Hon"ble Supreme Court in the case of Surender Kumar Sharma Vs. Makhan Singh, is held as under:

"5.. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and latches in making the application for amendment cannot be a ground to refuse amendment.

6. It is also well settled that even if the amendment prayed for is belated, while

considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by cost or otherwise."

12. In view of the stand taken by the plaintiffs in the application for amendment that the proposed properties are joint family properties and the objections filed by defendants that the proposed properties are not belonging to joint family of the plaintiffs and defendants and in another breath, they state that the proposed properties belong to the mother of defendants 1 to 4 and they are standing in their names as absolute owners. All these factual aspects would be considered only after a full pledged trial of the parties to the lis.

13. The dictums of the Hon"ble Supreme Court, stated supra, has held that while allowing the amendment application, the courts should not be too technical. Ultimately, the justice should be done to the parties to avoid further litigation.

14. In the present case, the amendment is only for inclusion of three more house properties in the Schedule. The proposed amendment of the plaint Schedule will in no way prejudice to the case of the defendants and will not change or alter the nature of the suit. Therefore, the proposed amendment is required to avoid multiplicity of proceedings. Taking into consideration, the entire material on record, the trial court passed the impugned order, allowing the application for amendment with cost of Rs. 1,000/-. The same is in accordance with law. Hence, no interference is called for in exercise of writ jurisdiction under Articles 226 and 227 of Constitution of India.

15. Accordingly, the writ petition is dismissed. However, it is always open for the defendants/present petitioners to file additional written statement, if any.