

**(2010) 10 KAR CK 0121**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 29671 of 2010**

Sri M. Nagaraj and Sri M. Basavaraj

APPELLANT

Vs

Sri N. Venkataswamappa

RESPONDENT

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**Date of Decision :** 21-10-2010

**Acts Referred:**

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

**Citation :** (2010) 10 KAR CK 0121

**Hon'ble Judges :** A.N. Venugopala Gowda, J

**Bench :** Single Bench

**Advocate :** A. Madhusudhana Rao, for the Appellant; B.V. Ananda, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.N. Venugopala Gowda, J.—Petitioners have filed suit against the Respondent; for the relief of permanent injunction contending that, the suit schedule property is their ancestral property and the Defendant has no right to interfere with its possession and enjoyment by them. The Respondent by filing written statement has contested the claim made in the suit by the Petitioners.

2. Issues having been framed, trial of the suit commenced on 2.12.2008. P.W.1 was cross examined on 9.12.2008 and the suit was posted for the evidence of the Defendant on 8.3.2009.

3. Respondent filed I.A. 13 under Order 6 Rule 17 CPC seeking permission of the Court to amend the written statement. Said application was filed on 8.2.2010, to which the Plaintiffs filed statement of objections on 23.2.2010. The Trial Court has allowed the application and has permitted the Defendant to incorporate the amendment in the written statement. Aggrieved, the Plaintiffs have filed this writ petition.

4. Sri A. Madhusudhana Rao, learned Counsel appearing for the Petitioners contended that, the application having been filed after commencement of trial

and there being no due diligence shown on the part of the applicant/Respondent, the Trial Court has committed error and illegality in allowing I.A.13. Learned Counsel further submits that, on account of the belated application filed, that too, after the Plaintiffs have closed their side of evidence irremediai prejudice would occasion to the Petitioners which fact has not been considered by the Trial Court.

5. Sri B.V. Ananda, learned Counsel appearing for the Respondent on the other hand, made submissions in support of the findings and conclusion of the Trial Court in allowing I.A.13.

6. I have perused the writ papers.

7. The point for consideration is, whether the Trial Court has committed any irrational act in allowing I.A.13?

8. Power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice unless serious injustice or irreparable loss is likely to be caused to the other side. The Courts would be liberal in allowing the amendment of written statement than that of a plaint as the question of prejudice would be far less in the case of allowing the amendment of written statement than in the case of permitting the amendment of plaint.

9. Proviso under Rule 17 of Order 6 CPC places an embargo on the power of the Courts to permit the amendment after the commencement of the trial 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 trial. In the instant case, issues have been framed and trial of the suit has taken place, The Plaintiffs' side of evidence is complete. I.A.13 was filed when the suit was at the stage of Defendant's evidence.

10. A perusal of the impugned order would indicate that the Trial Court has not recorded any finding as to whether the proposed amendment is necessary for determining the real question in controversy between the parties and in view of the Plaintiffs' side of trial having been completed whether permitting of the amendment would cause injustice to them. The Trial Court has also not recorded any finding as to whether there was due diligence on the part of the Defendant despite which, he could not plead the proposed amendment while filing the written statement. The impugned order except referring to the decisions of the Hon'ble Supreme Court reported in Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others, , has not recorded any finding as to whether in the facts and circumstances of the case, the Defendant should be permitted to amend the written statement and incorporate the additional pleading. The affidavit in support of I.A.13 is also bald. The impugned order has been passed without due consideration of the matter and mechanically. Hence, the same is unsustainable.

In the result, the writ petition stands allowed and the impugned order stands

quashed. The Trial Court is directed to reconsider I.A.13 in the light of the observations made supra and in accordance with law, within a period of 4 weeks from the date a copy of this order is placed on record by either of the parties. Contentions of both parties are kept open for consideration. No costs.