



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 24TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.7473/2021 (GM-CPC)

BETWEEN:

SHRI. MAHESH BABU
SINCE DEAD REPRESENTED
BY HIS LEGAL REPRESENTATIVES.

1. H.U. LAVANYA
AGED ABOUT 41 YEARS
W/O MAHESH BABU.
2. KUM. R.M. LAKSHMI
AGED ABOUT 17 YEARS
D/O LATE MAHESH BABU.
3. KUM. R.M. NAMRATHA
AGED ABOUT 15 YEARS
D/O LATE MAHESH BABU.

ALL ARE R/AT RANGANATHAPURA
LAKKENAHALLI POST
CHELLUR HOBLI, GUBBI TALUK
TUMKUR DISTRICT-572101.

SINCE PETITIONER NO.2 AND 3 ARE
MINORS REPRESENTED BY HER MOTHER
AS A NATURAL GUARDIAN SINCE THEIR
FATHER IS EXPIRED.

...PETITIONERS

(BY SRI. SAMPATH A, ADV.,)





AND:

1. SRI. C.R. CHANNABASAPPA
AGED ABOUT 67 YEARS
S/O LATE RAJAPPA SHETTY
R/AT NO.56, 2ND CROSS
7TH C MAIN, RPC LAYOUT
VIJAYANAGAR, BANGALORE-560040.
2. SMT. SAKKUBAI @ SAKKU
AGED ABOUT 77 YEARS
W/O LATE K.R. DANANJAYA
C/O SRIRAMULU
GOVINDASWAMY COLONY
RAILWAY ROAD, KOTTAM POST
SIRKALLI TALUK
NAGAPATNAM DISTRICT
TAMIL NADU-611001.
3. THE BRANCH MANAGER
TGMC BANK LTD
RAJAJINAGAR BRANCH
BENGALURU-560010.

[NOTICE TO R-3 MAY BE D/W
AS IT IS A FORMAL PARTY]

...RESPONDENTS

(BY SRI. SRIDHARA N, ADV., FOR R1
SRI. T. BASAVARAJ, ADV., FOR R3
R2 SERVED BUT UNREPRESENTED)

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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS OF
OS NO.3555/2007 PENDING ON THE FILE OF LEARNED LV
ADDL CITY CIVIL AND SESSIONS JUDGE (CCH-56) AT
BENGALURU. SET ASIDE THE ORDER DTD 08.03.2021 ON IA
NO.XXI IN OS NO.3555/2007 PASSED BY THE LEARNED LV
ADDL CITY CIVIL AND SESSIONS JUDGE (CCH-56) AT



BENGALURU, VIDE ANNEX-A AND CONSEQUENTLY ALLOW THE APPLICATION & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 18.03.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 08.03.2021 passed on I.A.No.XXI filed in O.S.No.3555/2007 by the LV Additional City Civil and Sessions Judge at Bangalore (CCH-56) (for short, 'the Trial Court').

2. Sri.Sampath A., learned counsel for the petitioners submits that the plaintiffs have filed a suit against the respondents for the relief of declaration that the plaintiffs are the owners of the suit schedule property and further relief to declare that the decree in O.S.No.6713/2003 and the sale deed dated 23.03.2007 were not binding on them. In the said suit, the plaintiffs have filed an application seeking amendment of the plaint



to bring the subsequent events on record. The said application was rejected by the Trial Court on the ground that the amendment sought is not connected to the controversy involved in the suit and as on the date of filing of the written statement, the defendants have disputed the possession of the plaintiffs over the suit schedule property and the prayer sought in the amendment application is a distinct cause of action and the remedy lies elsewhere. It is submitted that the defendants filed a suit against the tenants of the plaintiffs which was decreed and thereafter, in an execution proceeding, they got the possession of the suit schedule property which compelled the petitioners to file an application seeking for the amendment of the pleading and an additional relief of possession which is a consequential relief to the main relief. In support of his contentions, he placed reliance on the decision of this Court in the case of **SHRI**



**MOHAMMADRAFI AND ANOTHER Vs. BANDENAWAZ
AND OTHERS¹** and seeks to allow the petition.

3. *Per contra*, the learned counsel appearing for the respondents supports the impugned order of the Trial Court and submits that the application is filed for amendment after the commencement of the trial and without any due diligence. It is submitted that PW-1 in the cross-examination has admitted that the defendants have taken possession in the year 2005 and if that is so, the amendment sought as well as the prayer for possession are beyond the period of limitation. It is further submitted that the tenants of the ground floor have handed over the possession to the defendant No.1 and insofar as the tenants of the first floor, the defendants entered into an agreement with them and for the breach of such agreement, they filed a suit for ejection which came to be decreed. All these facts were within the knowledge of the plaintiffs. Hence, the Trial Court rightly

¹ W.P.No.108512/2025 dt. 16.12.25



declined to entertain the application for amendment. In support of his contentions, he placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***PANDIT MALHARI MAHALE Vs. MONIKA PANDIT MAHALE AND OTHERS², M REVANNA Vs. ANJANAMMA (DEAD) BY LRS AND OTHERS³ AND SHANTI DEVI (SINCE DECEASED) THROUGH LEGAL REPRESENTATIVE. GORAN Vs. JAGAN DEVI AND ORS.⁴*** and seeks to dismiss the writ petition.

4. I have heard the arguments of the learned counsel for the petitioners, learned counsel for the respondents and perused the material available on record.

5. The petitioners filed O.S.No.3555/2007 against the respondent Nos.1 and 2 seeking prayer to declare that the plaintiffs are the full and absolute owners of the suit schedule property and consequently, to declare that the decree obtained by the defendant No.1 against the

² (2020) 11 SCC 549

³ (2019) 4 SCC 332

⁴ (2025) LIVELAW (SC) 900



defendant No.2 dated 27.11.2005 in O.S.No.6713/2003 and sale deed dated 23.03.2007 registered on 04.04.2007 are null and void and not binding on the plaintiffs. The case of the plaintiffs is that the suit schedule property was bequeathed in favour of the original plaintiff by his adoptive father late K.R.Dhananjaya by way of registered Will dated 17.12.1999. It is averred that the adoption of the original plaintiff to the younger brother of the plaintiff's father is confirmed in the decree in O.S.No.127/1999. The name of the original plaintiff was entered in the revenue records based on such Will and the plaintiffs are in enjoyment of the suit schedule property without any hindrance, they have made several improvements by raising the funds. It is further averred that the defendant No.2 who was residing separately, in collusion with the defendant No.1, concocted the agreement of sale in the name of late Sri.K.R.Dhananjaya by forging his signature and based on such agreement, the defendant No.1 filed a suit in O.S.No.6713/2013 for specific performance of the



agreement which came to be decreed. It is also averred that the defendant No.1 filed an execution petition in E.P.No.1748/2006 and got the sale deed executed and registered on 04.04.2007. It is contended that the defendant No.1 tried to take possession of the property from the tenants of the petitioners which was resisted by him. The respondents filed a detailed written statement denying the assertions in the plaint by contending that the defendant No.1 is the absolute owner in peaceful possession and enjoyment of the suit schedule property. It is specifically denied that the defendants made any attempt to dispossess the plaintiffs and the tenants from the suit schedule property.

6. The records further indicate that the defendant No.1 filed O.S.No.4400/2010 against the tenants who were in the premises, for ejectment and delivery of the possession. The said suit came to be decreed on 01.01.2016. The defendant No.1 has contended before this Court that he has independently entered into an



agreement with the tenants and for violation of the terms of the tenancy agreement, the suit for ejection was filed which was decreed. It is also noticed that the defendant No.1 filed an execution case in E.P.No.2838/2017 and through the process of the Court, the tenants were evicted on 25.01.2019 and the defendant No.1 took possession. Though it is contended by the defendant No.1 in this proceeding that the suit and the execution proceedings for ejection and taking over the possession is only with regard to the first floor of the property and the ground floor property was already with the defendant No.1. I am of the considered view that the said aspect is required to be considered by the Trial Court during the trial. It is to be noticed that the proposed amendment sought by the plaintiffs is the subsequent events after filing of the suit and those facts are required to be brought on record for complete adjudication of the dispute between the parties. It is to be further noticed that the relief of possession sought by the plaintiffs is consequential to the main relief



sought in the plaint and the relief of possession is sought by the plaintiffs based on the specific foundation that the defendant No.1 filed the suit against the defendant No.2, got the sale deed executed in his favour and thereafter, filed a suit for ejectment against the tenants claimed to be of the plaintiffs and got them evicted in the execution proceedings and these events are required to be considered by the Trial Court to grant the relief sought in the plaint. It is also noticed that the relief sought by the plaintiffs in the suit is for the declaration of their ownership, declaration that the judgment and decree in O.S.No.6713/2003 and the sale deed dated 23.03.2007 registered on 04.04.2007 are null and void and not binding on them and if the plaintiffs are able to prove his case before the Trial Court and the Trial Court decrees the suit in favour of the plaintiffs, then petitioner cannot be asked to file a suit for possession separately which would lead to the multiplicity of the proceedings. The contention of the defendant No.1 that the plaintiffs were having knowledge



with regard to the dispossession which is admitted by PW-1, there is no due diligence and the prayer sought is barred by the law of limitation, are required to be considered by the Trial Court during the trial. The decision in the case of **PANDIT MALHARI MAHALE** referred *supra*, is with regard to the proviso to Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'the CPC') and in the said case, the plaintiff has failed to establish due diligence. However, the case on hand is different on facts as the plaintiffs intend to bring the subsequent events on record. In the decision in the case of **M.REVANNA** referred *supra*, at paragraphs 7 and 9, it is held as under:

"7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

9. *Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the application for amendment of the plaint is not only belated but also not bona fide, and if allowed, would change the nature and character of the suit. If the application for amendment is allowed, the same would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiffs 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission*



for amendment of the plaint at this stage would cause serious prejudice to Plaintiff 6 Respondent 1 herein."

7. The aforesaid decision also refers to the aspect of due diligence and it is further held that the amendment cannot be claimed as a matter of right and under all the circumstances. Though normally the amendments are allowed in pleadings, to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is *bona fide* or *mala fide* and whether the amendment causes any prejudice to the other side which cannot be compensated in terms of money and allowing the amendment would lead to withdrawal of admission. In the case on hand, the plaintiffs intend to place on record the subsequent event of filing the suit for ejectment against the tenants, taking over possession from the tenants in the judicial proceedings and that no prejudice would be caused to the defendants by allowing the amendment. Insofar as the alleged admission of PW-1 in the evidence, it is a stray sentence with regard to taking



of the possession by the defendant No.1 and based on such a stray sentence, at the stage of consideration of the application for amendment of the pleadings, there cannot be any finding with regard to the clear admission of PW-1 or the aspect of limitation. The Trial Court is required to consider the aspect of admission of PW-1 with regard to the possession and based on such admission, it is required to consider whether the plea for possession is beyond the period of limitation.

8. The Co-ordinate Bench in the case of **MOHD. RAFI** has considered the effect of proviso to Order VI Rule 17 of the CPC. Some of the paragraphs of the said decision is extracted hereinbelow:

"22. Since the original text of Order VI Rule 17 of the Code is retained in the 2002 amendment to the Code, it is apparent that Parliament did not do away with the primary purpose of the rule providing amendment, i.e., to:

- (a) decide the real questions in controversy;*
- (b) avoid multiplicity of litigation.*



23. The principles of liberal construction still apply in those situations where the application seeking amendment of pleading is filed to avoid multiplicity of litigations and to resolve all controversy between the parties, notwithstanding the proviso. However, the proviso cannot be made nugatory; it has a purpose to serve in appropriate cases.

24. It may not be possible to exhaustively list where amendment applications "post-commencement of trial" have to be allowed in spite of the party applying for amendment not passing the "due diligence test".

25. The Court is of the considered view that in the following instances (illustratively and not exhaustively), applications seeking amendment of pleadings can be allowed without the "due diligence test," even if such applications are filed "post-commencement of trial."

Applications to:

- (a) correct typographical errors in the dates of events, documents, etc.;*
- (b) correct property number, extent, location, or discrepancies in the boundary or any other misdescription of the property;*
- (c) insert events and developments that have taken place post-filing of the suit and which have a*



- bearing on the final decision;*
- (d) incorporate a prayer owing to a subsequent event that has taken place during the pendency of the suit, keeping open the question of limitation;*
- (e) add a few additional facts or furnish better particulars to the facts already pleaded;*
- (f) add facts in support of the relief already claimed;*
- (g) seek relief in the alternative, which is in the nature of a lesser relief than the one already claimed. Example: In a suit for declaration of exclusive title and injunction, an application seeking the alternative relief of partition.*
- (h) Seek additional relief or relief ancillary to the main relief when the relief sought by way of amendment is available based on the pleadings already made.*

26. In the aforementioned situations (broadly or generally speaking, excluding exceptional cases), in case the application seeking amendment of pleading is rejected on the premise that the applicant has not passed the "due diligence" test, it would cause injustice and would defeat the object of the first (main) part of Order VI Rule 17 of the Code, which aims at minimizing or avoiding multiplicity of litigation and provides for



determining real questions in controversy between the parties.

29. There is one more angle to hold that every application under Order VI Rule 17 of the Code "post commencement of the trial" need not undergo the due diligence test as contemplated in the proviso. Order VI Rule 17 of the Code was omitted in 1999. It was re-introduced in 2002, albeit with a restrictive proviso. However, reintroduced part still contains the expression "at any stage of the proceedings". Said expression is not replaced by the expression "before commencement of the trial" or any other suitable expression of giving similar meaning.

35. In the instant case, the plaintiffs asserted to be the owners of the suit property and claimed to be in possession as of the date of the suit, and sought the declaration of title and injunction. In the year 2024, 10 years after the suit, and after cross-examination of PW2, amendment was sought to incorporate the plea that plaintiffs were dispossessed in 2022 and the additional relief of possession. Whether the plaintiffs were dispossessed prior to the suit as alleged by the defendants, or during the pendency of the suit as alleged by the plaintiffs, is a matter of trial.



36. Thus, this is one such case where the "due diligence" test as provided under the proviso to Order VI Rule 17 of the Code does not assume importance, and in a situation brought in this case, the proviso has to yield to the main part of Order VI Rule 17 of the Code to achieve the purpose behind the provision providing for amendment. The Trial Court could not have dismissed the application seeking amendment to incorporate the prayer for possession and facts to support such a prayer merely because the trial had commenced.

37. On the question of delay: The Trial Court also dismissed the application on the premise that the application seeking amendment was filed 10 years after the suit.

44. The application seeking amendment was filed in 2024 to seek the relief of possession, asserting that the dispossession occurred in 2022. This is apparently contrary to the admission in cross-examination.

45. To substantiate the dispossession in the year 2022, the plaintiffs rely on the statement of PW2.

46. The question is whether the Court must at the stage of application seeking amendment of pleading



is required to determine the merits of the proposed amendment i.e., if dispossession occurred in 2014 or 2022. The law in this behalf is well-settled: the Court is not required to get into the merits of averments in the proposed amendment while considering the amendment application. There is no need to decide on the date of dispossession while considering the application seeking amendment. Thus, even if the plaintiffs have admitted in cross-examination that they were dispossessed in 2014 (i.e., prior to the suit), the application filed in 2024 seeking amendment to incorporate the plea for possession is necessary to decide the real controversy between the parties, as to when the dispossession took place."

9. Keeping in mind the various decisions referred *supra* and considering the peculiar facts and circumstances of the case, I am of the considered view that the Trial Court has committed an error in recording the finding that the proposed amendment does not amount to bringing subsequent events on record and such facts are not connected with the controversy involved in the suit and it is a distinct cause of action. The proposed amendment, as



already stated *supra* is the subsequent event that the plaintiffs intend to bring on record with regard to the dispossession of the plaintiffs through the process of the Court in the suit and the execution proceedings instituted by the defendant No.1 and no prejudice would be caused to the other side if the amendment is allowed. Keeping this principle in mind and also considering the fact that the proposed amendment would aid the main relief sought in the plaint, the plaintiffs cannot be compelled to file a separate suit for possession.

10. For the aforementioned reasons, I proceed to pass the following:

ORDER

- (i) The writ petition is ***allowed.***
- (ii) The impugned order dated 08.03.2021 passed on I.A.No.XXI filed in O.S.No.3555/2007 by the LV Additional City Civil and Sessions Judge at Bangalore, is set aside. Consequently,



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I.A.No.XXI filed under Order VI Rule 17 read
with Section 151 of the CPC, is allowed.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 3 Sl No.: 1