

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 31ST DAY OF MARCH 2010

BEFORE

THE HON'BLE MR. JUSTICE B. MANOHAR

WRIT PETITION NO.26544/2009 (GM-CPC)

BETWEEN :

SRI NAGAI AH REDDY,
S/O VENKATAMA REDDY UKUF,
DODDAPPAIAH,
AGED ABOUT 69 YEARS,
R/AT KONAPPALLI,
AMBAJIDURGA HOBLI,
CHINTAMANI TALUK,
KOLAR DISTRICT.

...PETITIONER

(BY SRI G. BALAKRISHNA SHASTRY, ADV.)

AND:

1. ASWATHANARAYANA REDDY,
S/O LATE SHIVARAMA REDDY,
AGED ABOUT 54 YEARS,
R/AT KONAPPALLI,
AMBAJIDURGA HOBLI,
CHINTAMANI TALUK,
KOLAR DISTRICT.
2. VENKATARAMANA REDDY,
S/O LATE SHIVARAMA REDDY,
AGED ABOUT 49 YEARS,
R/AT KONAPPALLI,
AMBAJIDURGA HOBLI,
CHINTAMANI TALUK,
KOLAR DISTRICT.
3. SMT. VENKATAMMA,
W/O YEE RAPP A REDDY,
AGED ABOUT 69 YEARS,

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R/AT KONAPPALLI,
AMBAJIDURGA HOBLI,
CHINTAMANI TALUK,
KOLAR DISTRICT.

... RESPONDENTS

(BY SRI V.RAGHAVENDRA FOR
M/S SRI GURU GANESH ASSTS. ADVS.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 31.07.2009, ON I.A.NO.4 IN O.S.NO.70/2000 ON THE FILE OF THE CIVIL JUDGE (SR.DVN) & JMFC, CHINTAMANI CERTIFIED COPY OF WHICH IS PRODUCED AT ANNEXURE-A.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In the above writ Petition, the petitioner has challenged the order dated 31.07.2009 made on I.A.No.IV in OS No.70/2000 on the file of Civil Judge (Sr. Dvn.) and JMFC, Chintamani.

2. The petitioner/ plaintiff has filed a suit in O.S.No.70/2000 seeking for declaration declaring that plaintiff is the lawful owner of the property bearing Sy.No.10/1 measuring 01 acre 04 guntas of land situated at Konapalli, Ambajidurga Hobli, Chintamani Taluk and for consequential relief of permanent

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injunction restraining the defendants from interfering with plaintiffs peaceful possession and enjoyment. It was contended that he has perfected his title by adverse possession.

3. Further, the learned counsel for the petitioner contended that the petitioner/plaintiff and his family members have been in continuous possession and cultivation of the land raising crops uninterrupted, continuously adverse to the interest of the defendant and other family members and to their open knowledge and the plaintiff is continued to be in adverse possession of the Suit Schedule Land and acquired title. Further the petitioner is contending that katha in respect of suit schedule land stands in the name of father of the petitioner and they are paying kandayam and his father was shown as a cultivator in relevant column of RTC in the year 1964. After the death of his father, katha was transferred in the name of the mother. When the defendant tried to interfere with their peaceful possession and enjoyment, the petitioner filed

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the above suit. On issuance of notice by the Court below, the defendants entered appearance and filed the written statement, contending that the suit schedule property is the ancestral property of the defendants, which was purchased by their father namely Sri. Shivarama Reddy under a registered sale deed dated 03.05.1955 later it was sold to one Sri. Patel Subbi Reddy, by the mother of the defendant in the year 1958. Subsequently, it was once again purchased by the mother of the defendants one Smt. Ramakka for a valuable consideration under a registered sale deed dated 05.08.1959. After the death of Smt. Ramakka, katha of the said suit schedule land ought to have been transferred to the name of the defendants. But the plaintiff has maneuvered the revenue officials and got the katha changed in his name. The defendant filed an application before the competitive authority to get mutated the entries in the name of the defendants. It is the contention of the defendants that the Appeal filed by the plaintiff was pending consideration before the Assistant Commissioner. Hence, the plaintiff filed a suit



contending that by virtue of the adverse possession he becomes the absolute owner of the Suit Schedule Property. It is also contended that the plaintiff has no right, title in respect of the aforesaid property.

4. On the basis of the pleadings, necessary issues have been framed and the Trial has been commenced and plaintiff led his evidence on 12.01.2004 itself. Further the plaintiff was also cross-examined. When the matter stood thus, the plaintiff filed I.A.No.4 under Order VI Rule 17 seeking for amendment of the plaint. The plaintiff sought to add para 2(a) and 2(b) to the plaint which reads as under :

2(a) : Under registered release deed, dated 25.04.1940, the northern half share of suit Sy.No.10/1 was allotted to the share of plaintiff's father. In the schedule, the total extent of property was shown as 0-24 guntas whereas in survey, the extent found to be 1-04 guntas which was allotted under the above release deed.

2(b) : The plaintiff's father who acquired northern half portion as said above,

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also trespassed into the southern half share remaining in the said survey number as stated hereunder".

5. The petitioner has contended that while he was searching some old papers in his house, he traced the Xerox copy of the Registered Release Deed dated 25.04.1940 and ascertained that his father acquired northern half portion share in Sy.No.10/1. This fact, he came to know only in the year 2009 and by virtue of the release deed he became the owner of northern half portion of the Sy. No.10/1 and sought for amendment of the plaint. The amendment of the plaint will not prejudice the interest of the defendants and it will not cause any injustice to the defendant and sought for allowing the application.

6. Learned Civil Judge after hearing the matter at length, by his order impugned in the above writ petition was pleased to reject the said application. In para 8 of the Judgment, learned Civil Judge clearly held that suit has been filed in the year 2000, evidence has been

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commenced on 12.01.2004. The application for amendment has been sought in the year 2009. Long after the commencement of the Trial, the amendment of plaint will change the entire nature of the suit. New issues have to be framed and the parties have to once again lead the evidence, which would cause hardship to the defendants. The nature of the suit will also be changed. Hence rejected the said application.

7. Being aggrieved by the said order, the present writ petition has been filed by the plaintiff contending that the order passed by the Trial Court is contrary to the order VI Rule 17 of CPC. The Court at any stage of the proceedings can amend the plaint. The amendment of the plaint will not change the nature of the suit and will not prejudice the interest of the defendants and sought for setting aside the order passed by the learned Civil Judge.

8. The respondents contended that the application has been made long after the commencement of Trial, the plaintiff's evidence was



recorded on 12.01.2000^b and he has also been cross-examined. The suit is posted for the evidence of the defendants. At this stage, an application for amendment of the plaint is not maintainable and the learned counsel for the Respondents also relied upon the Judgment of the Supreme Court in the case of **Vidyabai and others v/s Padmalatha and another reported in AIR 2009 SC 1433** and contended that the amendment of the pleadings after the commencement of the Trial is not permissible and sought for dismissal of the writ petition.

9. I have heard the arguments of the learned counsel appearing for the petitioner and defendants and gone through the order passed by the learned Civil Judge. The admitted fact is that the suit has been filed in the year 2000 seeking declaration declaring the plaintiff as lawful owner of the property having acquired the title by adverse possession and also relief of permanent injunction restraining the defendants from interfering with the peaceful possession. The defendants have also filed their objection. On the basis of the pleadings, necessary issues have been framed,



thereafter the Trial has been commenced and plaintiff has commenced his evidence on 12.01.2004. Further plaintiff has also been cross-examined. Long after the commencement of the Trial, in the year 2009 plaintiff filed an application under Order VI Rule 17 for amendment of the plaint contending that he has traced some Xerox copy of the release deed dated 15.04.1940 and as per the said release deed his father had acquired the ownership over the half share of northern portion of Sy. No.10/1. Hence sought for amendment of the plaint. The defendant's case is that the said Suit Schedule property is their ancestral property. It was purchased by the defendants' father one Sri. Shivarama Reddy in the year 1955 and his mother sold the same in 1958. Once again in the year 1959 his mother purchased the said property. The katha stands in the name of their mother till her death and after her death, they have been in possession of the said property.

10. The reading of Order VI Rule 17 of CPC, makes clear that the Court may at any stage of proceedings,



allow either party to alter or amend his pleadings in such manner and on such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, provision of Rule 17 brought some embargo that no application for such an amendment shall be allowed after the trial has been commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have taken steps in the matter before the commencement of trial. In the Judgment of Supreme Court referred to by the respondents, it is clearly held that the Court should not permit to amend the pleadings after the commencement of the trial. In the present case the petitioner has not shown any document to show that in spite of due diligence he could not take steps earlier, except to contend that when he was searching the old papers he traced Xerox copy of the release deed dated 25.04.1940. The Trial Court after considering the contentions raised by the petitioner rejected the same.



11. I find no error or irregularity in the order passed by the Trial Court. Petitioner has not made out any case for setting aside the order. Accordingly, this petition is dismissed.

/Sd/-
JUDGE

Vsk/