IN THE HIGH COURT OF KARNATAKA AT BANGALORE

ON THE 25TH DAY OF JUNE 2012

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

WRIT PETITION NOS.9448-9451 OF 2012(GM-CPC)

BETWEEN :

1 SRI B V NAGESH
S/O LATE B.L.VEERABHADRAN
AGED ABOUT 50 YEARS,

2 SRI B V JAGADEESH
S/O LATE B.L.VEERABHADRAN
AGED ABOUT 48 YEARS,

3 SMT T S PREMALEELA
D/O LATE B.L.VEERABHADRAN
AGED ABOUT 52 YEARS,

4 SMT PADMAVATHY
D/O LATE B.L.VEERABHADRAN
AGED ABOUT 46 YEARS,

ALL ARE RESIDING AT
NO.15, LADY CURZAN ROAD,
BANGALORE. ...PETITIONERS

(BY SRI A MADHUSUDHANA RAO, ADVOCATE)

AND :

SRI K JAYAPRAKASH
S/O LATE B KATAPPA
AGED ABOUT 53 YEARS,
R/A NO.11, BYAPPANAHALLI
NEW EXTENSION,
BANGALORE SOUTH TALUK
BANGALORE. ...RESPONDENT

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THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 17.2.2012 ON IA.NO.11 IN OS.NO.1970/94 FOUND AT ANNEXURE-H PASSED BY THE LEARNED VII ADDL.CITY CIVIL JUDGE BANGALORE.

THESE WRIT PETITIONS COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In the suit filed by the respondent seeking declaration that the alleged sale deed dated 24-7-1965 executed by D.Rangadhamulu Naidu in favour of the defendants are collusive, illegal, invalid, null and void and not binding on the plaintiff, filed

in the year 1994, an application under order 6 Rule 17 seeking amendment of the written statement filed in the year 2011, was rejected by the trial Court. Hence, the present Petition.

2. The learned counsel for the petitioner contends that the impugned order is bad in law and liable to be set aside. The only reason that prevailed with the trial Court was that the application has been made after a period of 16 years after the suit was filed and no sufficient cause has been shown. That the only intention is only to drag on the matter and accordingly the application was rejected. It is contended that the reasoning adopted by the trial Court is erroneous. He placed reliance on the Judgment reported in the case of SURINDER KUMAR SHARMA vs. MAKHAN SINGH reported in (2009) 10 SCC 626 particularly to paras 5 & 6 which reads thus:-

> *"5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned ie., the prayer for amendment was*

a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. 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 laches in making the application for amendment cannot be a ground to refuse the 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 costs or otherwise. (See B.K.Narayana Pillai v. Parameswaran Pillai). Accordingly, we do not find any reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed".*

Hence, it is pleaded that the material intended to be put into the written statement requires to be accepted for a just and final adjudication of the suit.

3. On hearing the counsel and examining the impugned order I do not find any reasons to interfere with the order passed by the trial Court. The trial Court while rejecting the application has given various reasons for the same. So far as delay is concerned it is contended that earlier it was a suit for bare injunction and in the year 2001 the prayer was amended to include the prayer for a declaration. Thereafter the matter was

being agitated on the question of court-fee which attained finality in the year 2010. Immediately thereafter the present application has been filed. There is no delay in making the application. While considering the said plea the trial Court was of the view that the application for amendment has been filed when the suit was posted for cross-examination of P.W.1 and that there is substantial delay in filing the application and nothing has been explained. Therefore, the application filed after such a belated stage without any reason cannot be accepted.

4. I do not find any error in the order passed by the trial Court that calls for any interference. The reasons given by the trial court is just and proper and in consonance with the facts of the case. So far as the application filed after the settlement of issue regarding the court-fee is concerned I'am unable to accept his contention. The issue regarding court-fee and the proposed amendment have no nexus. The amendment sought to be made by the defendant could have been made much earlier rather than to wait for adjudication on the question of court-fee.

Therefore the submission that the defendant was awaiting for the result of the adjudication in the matter of court-fee has no nexus with the reason for delay in filing the said application.

5. The trial Court has further held that even so far as the merits of the application is concerned with regard to para-9 of the proposed amendment it had already rejected it earlier by the Court on 19-7-1994. Notwithstanding the pleadings that are sought to be amended at least so far as para-9 of the amendment is concerned the same having been rejected the same cannot be reconsidered on that account. Hence, the trial court has rightly declined to allow the application.

6. I have perused the application as well as the accompanying affidavit in support of the same. In the narration of the facts as pleaded by the defendant it is stated therein that certain facts could not be clearly stated and some of the transactions which are not within their knowledge could not be pleaded. That in the meanwhile certain subsequent

developments have taken place such as proceedings initiated by one Sri Keshava Devadiga and others, and the development in the said proceedings has to be clarified through the written statement. That in the interregnum there is a formation by the Metro and these findings require to be stated in the amended written statement. A perusal of the affidavit would clearly show that none of the dates on which the events have occurred have been narrated. It is not an error in not mentioning the dates. Failure to mention the dates would apparently be deliberate. The facts so far as the transactions, the development such as proceedings initiated by Sri Keshava Devdigia are all with reference to particular dates. The defendant was aware of it. But when such things occur, on a failure to mention any of these dates the trial Court has rightly rejected the same. Therefore, notwithstanding the question of delay in filing the application seeking amendment even so far as merits of the application is concerned I'am of the considered view that the petitioner has failed to make out a case for allowing the application. Under these circumstances, there is no error in passing the impugned

order that calls for interference.

7. Reliance on paras-5 & 6 of the Judgment cited supra has been placed for consideration. At para-5 the Hon'ble Supreme court has held that even that there is a valid application for amendment it cannot be refused if it is found that for deciding the real controversy it can be allowed. In the instant case, on the appreciation of material as well as the application I'am of the considered view that such an issue does not arise. Reliance on para-6 is to the effect that in order to do full and complete justice the amendment can be allowed which can be compensated by costs or otherwise. The question of payment of costs or otherwise in allowing the application does not arise. I'am of the considered view that the application lacks merit. Notwithstanding the delay in filing the application even so far as merit is concerned I'am convinced that the petitioner has failed to make out a case for allowing the application. Hence the said judgment would not be of any help to the petitioners.

For the aforesaid reasons, the Petition being devoid of merits, is dismissed.

Sd/-
JUDGE

Rsk/-