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Reinterpreting The Due Diligence Proviso: Karnataka High Court On Order VI Rule 17 CPC

AUTHOR Aaushi Doshi, Aryaveer Khanna

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Introduction

The Hon'ble Karnataka High Court in the Writ Petition of Shri Mohammadrafi & Anr. vs Bandenawaz & Ors.[1] substantial and practice shaping interpretation of Order VI Rule 17 of the Code of Civil Procedure, 1908, which relates to the amendment of a plaint after commencement of trial particularly the scope of the proviso inserted by the 2002 amendment. The judgment addresses a recurring problem in trial courts: the mechanical rejection of amendment applications filed after commencement of trial solely on the ground that the applicant has not satisfied the "due diligence" requirement. The Court holds that such an approach is legally unsustainable and contrary to the object of the provision.

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Factual Background

The plaintiffs had instituted a suit in 2015 seeking (i) a declaration that a sale deed dated 24.04.2009 executed by their father in favour of the defendants be declared cancelled, and (ii) a consequential injunction to protect their possession. The defendants contested the suit on the basis of title and possession derived from the same sale deed.

During the course of trial, after the evidence of PW2, the plaintiffs filed an I.A under Order VI Rule 17 CPC in 2024 seeking amendment of the plaint. By this amendment, they sought to plead that they had been dispossessed from the suit property during the pendency of the suit in 2022 and, consequently, sought to add a prayer for recovery of possession. The defendants opposed the amendment, pointing out that in cross examination the plaintiffs had admitted dispossession in 2014, i.e., before the suit was filed. The Trial Court rejected the amendment on four grounds: failure to satisfy the due diligence requirement; inordinate delay of 10 years from institution of the suit; the amendment nullifying admissions made in evidence; and the view that the amendment was unnecessary for adjudication.

Issues

The central question before the High Court was whether the due diligence test under the proviso to Order VI Rule 17 applies rigidly and universally to every amendment application filed after commencement of trial, or whether the proviso has inherent limitations depending on the nature of the amendment sought.

Court's Analysis

The Court undertook a structural reading of Order VI Rule 17 and noted that even after the 2002 amendment, the main part of the rule continues to empower courts to permit amendment of pleadings "at any stage of the proceedings" for determining the real questions in controversy. The proviso, requiring demonstration of due diligence after commencement of trial, was introduced to curb misuse of amendments as a dilatory tactic. It reasoned that the object of the proviso was not to emasculate the main provision but to discipline litigants who seek amendments mala fide to delay proceedings. A strict, literal reading of the proviso that overrides the main provision would defeat the legislative intent of resolving real controversies and avoiding multiplicity of litigation.

A significant contribution of the judgment is the Court's illustrative but not exhaustive listing of situations where post-trial amendments may be allowed even without strict satisfaction of the due diligence test. These include:

1. Correct typographical errors in the dates of events, documents, etc.;
2. Correct property number, extent, location, or discrepancies in the boundary or any other misdescription of the property;
3. Insert events and developments that have taken place post filing of the suit and which have a bearing on the final decision;

4. Incorporate a prayer owing to a subsequent event that has taken place during the pendency of the suit, keeping open the question of limitation;
5. Add a few additional facts or furnish better particulars to the facts already pleaded;
6. Add facts in support of the relief already claimed;
7. 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
8. 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.

The Court held that the present case fell squarely within this framework, as the alleged dispossession during the pendency of the suit was a subsequent event directly impacting the nature of relief required.

The Trial Court had been influenced by the fact that the amendment was sought 10 years after institution of the suit. The High Court clarified that the correct test is whether the relief sought by amendment is barred by limitation as on the date of the application. Under Articles 64 and 65 of the Limitation Act, a suit for possession can be filed within 12 years from dispossession. Whether dispossession occurred in 2014 or 2022 was itself a matter of trial. The Court held that when an amendment flows from existing pleadings or subsequent events, mere passage of years is not determinative. The amendment must be assessed on its legal necessity and timeliness in terms of limitation, not on elapsed time alone.

The court held that at the stage of considering an amendment application, the court does not adjudicate the truth of the proposed plea. Admissions are evidentiary matters to be tested at trial. Allowing the amendment does not nullify the admission; it only enables adjudication of the real issue.

The defendants argued that adding a prayer for possession changed the nature of the suit. Relying on Supreme Court precedents such as Abdul Rehman v. Mohd. Ruldu[2], Sampath Kumar v. Ayyakannu[3], and Rajesh Kumar Aggarwal v. K.K. Modi[4] , the Court reiterated that a change in the nature of relief does not necessarily amount to a change in the nature of the suit. The foundational assertion of title remained the same; the amendment only sought a consequential relief.

The Court observed that even where the proviso appears to stand in the way, courts retain inherent powers under Section 151 CPC to permit amendments necessary for the ends of justice. Procedural law must serve substantive justice, particularly in matters concerning pleadings.

Decision and Holdings

The judgment provides an important caution to trial courts against the tendency to reject amendment applications post-trial mechanically. The Court noted that sometimes amendments are refused at the stage of final arguments merely to avoid delay in disposal, which is an undesirable approach. If the amendment is otherwise necessary to determine the real controversy, it should be permitted, subject to costs and terms.

The High Court set aside the Trial Court's order, allowed the amendment subject to payment of ?7,000 as costs, and granted liberty to the defendants to file an additional written statement. It expressly clarified that no finding was recorded on whether dispossession occurred in 2014 or 2022; that question remains for trial.

Significance

This decision is of considerable practical importance. It restores the balance between the main provision and the proviso of Order VI Rule 17. It clarifies that the due diligence requirement is not a universal bar and that the nature and necessity of the amendment must guide the court's discretion. It provides structured guidance to trial courts and litigators, particularly in property disputes and declaratory suits where factual situations evolve during litigation. By emphasizing that procedural rigidity must yield to substantive justice, the Karnataka High Court has provided a reasoned framework that is likely to influence amendment jurisprudence across jurisdictions.

For more details, write to us at: contact@indialaw.in

1. WP No. 108512 OF 2025 (GM-CPC) ??
2. (2012) 11 SCC 341 ??
3. 2002 (7) SCC 559 ??
4. 2006 (4) SCC 385 ??

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