

**IN THE COURT OF XXXI ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE AT BENGALURU**

Dated this 12th day of December 2024

PRESENT : **SRI.VEDAMOORTHY B.S.** B.A.(L), LL.B.
XXXI Addl. City Civil & Sessions Judge, Bengaluru. (CCH-14)

O.S.No.545/2014

PLAINTIFFS : Mr.Sundra Gowda and another.

V/s

DEFENDANTS : Mr.Pattalappa and others.

i.	Provision under which the application is filed	Order VI Rule 17 of the Code of the Civil Procedure.
ii.	Relief sought for	Permission to amend the plaint.
iii.	The date on which the application is filed	22.03.2024
iv.	Number of the application	I.A.No.VII
v.	The date on which the objections are filed by different opponents	29.07.2024
vi.	The date on which the orders were passed on the said application	12.12.2024

ORDERS ON I.A.No.VII FILED BY THE PLAINTIFF

The plaintiff has filed I.A.No.VII under Order VI Rule 17 of the Code of Civil Procedure seeking an order to permit them to amend the following pleadings in their plaint :-

To include after para No.4

“4(a). It is submitted that the 1st defendant, upon receipt of the entire sale consideration and in terms of the Sale Agreement dated 21st June 1990, has executed the aforesaid registered General Power of Attorney dated 14.02.1991, registered as document No.167/1990-91 in favour of the 1st plaintiff, authorizing the Power of Attorney Holder to deal with the suit schedule property, including the authority to sell the item No.1 of the suit schedule property and put the Power of Attorney Holder in possession of the item No.1 of the suit schedule property. It is emphasized that the aforesaid General Power of Attorney is executed in terms of the Sale Agreement and after the receipt of the entire sale consideration. Therefore, the said Power of Attorney is coupled with interest and irrevocable.

4(b). It is submitted that the Revocation of the Power of Attorney by the 1st defendant vide Revocation of General Power of Attorney dated 10.07.2014, registered as document No.CMP-4-00132/2014-15, stored in CD No.CMPD114 in the office of the Sub-Registrar, Basavanagudi (Chamarajapete), Bengaluru is not only unilateral but is also contrary to the terms of the Sale Agreement. As such, the 1st plaintiff is entitled for declaration that the revocation of the Power of Attorney vide Revocation of General Power of Attorney dated 10.07.2014 is illegal and non-est.

To add additional prayer in the Prayer column

(a) Declare that Revocation of General Power of Attorney dated 10.07.2014, registered as document No.CMP-4-00132/2014-15 by the 1st defendant revoking the General Power of Attorney dated 14.02.1991, registered as document No.167/1990-91 is illegal and non-est.

2. In support of I.A.No.VII, the 1st plaintiff filed his affidavit stating that the 1st defendant agreed to sell the suit schedule Item No.1 property to him for sale

consideration amount of Rs.45,000/-. On 21.06.1990, he entered into an Agreement of Sale with the 1st plaintiff and received the entire sale consideration amount. He has also executed a registered General Power of Attorney dated 14.02.1991 in favour of the 1st plaintiff in terms of the said Agreement of Sale. The said Power of Attorney is coupled with interest and it is irrevocable in nature. But, the 1st defendant without issuance of notice to the 1st plaintiff has fraudulently revoked the said General Power of Attorney dated 14.02.1991 by executing Revocation of General Power of Attorney document dated 10.07.2014. The 1st plaintiff recently while preparing himself for cross-examination has noticed that in the written statement, the 1st defendant has contended that on 10.07.2014, he has revoked the said General Power of Attorney dated 14.02.1991 executed by him in favour of the 1st plaintiff. Since, the Power of Attorney dated 14.02.1991 is coupled with interest and it is irrevocable in nature, it cannot be revoked by the 1st defendant. Therefore, it is illegal and non-est. For the above reasons, the proposed amendment

is just and necessary for effective adjudication of the dispute. Hence, this application is filed.

3. Defendants No.1 to 4, 6 to 16 have not filed their objections to I.A.No.VII.

4. The 5th defendant filed objections to I.A.No.VII contending that the application is not maintainable either in law or on facts. The application is highly frivolous, vexatious and tainted with malafide objects, illegal motive and it is filed with an intention to harass the defendants. It is abuse of process of law. The plaintiff has not approached this Court with clean hands. The suit schedule property is the ancestral property of the 5th defendant. Neither the 5th defendant nor his family members executed the General Power of Attorney or any other documents. The 5th defendant and his family members are in joint possession and enjoyment of the suit schedule property. The alleged documents are created document. The suit is for permanent injunction. If the proposed amendment is permitted, the nature of the suit will be changed. The

plaintiffs have not paid the Court fee for the proposed relief. Hence, prayed to dismiss I.A.VII.

5. Heard the learned Counsels for the plaintiffs and the 5th defendant on I.A.No.VII. The learned Counsel for the plaintiffs has relied the judgment of the Hon'ble Supreme Court in the case between Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd. & another [(2022) 16 SCC 1]. Perused the materials available on record.

6. The following point that has been arisen for my consideration:

Whether the plaintiffs have shown sufficient reason to permit them to amend the plaint as prayed ? If so, what order?

7. My answer to the above point is in the Affirmative for the following:

REASONS

8. This suit is filed by the plaintiffs against the defendants for the relief of permanent injunction. The trial of the suit is already commenced. When the case is posted

for the cross-examination of PW1, the present application is filed.

9. I read the principles of law laid down in the judgment of the Hon'ble Supreme Court in the case between Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd. & another [(2022) 16 SCC 1]. The following principles of law are laid down in the said judgment.

“71.2 All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

71.3 The prayer for amendment is to be allowed

71.3.1 If the amendment is required for effective and proper adjudication of the controversy between the parties, and

71.3.2 To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4 A prayer for amendment is generally required to be allowed unless

71.4.1 By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

71.4.2 The amendment changes the nature of the suit,

71.4.3 The prayer for amendment is malafide, or

71.4.4 By the amendment, the other side loses a valid defence.

71.5 In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6 Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

76.7 Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

76.8 Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

76.9 Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

76.10 Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11 Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”

10. Keeping in view of the above principles of law, I read the plaint averments, averments in the written statement of the 1st defendant, proposed amendment and the materials available on record.

11. The claim of the plaintiffs is that they are in possession and enjoyment of the suit schedule Item No.1 property is based on the unregistered Agreement of Sale dated 21.06.1990 and registered General Power of Attorney dated 14.02.1991 executed by the 1st defendant. The

plaintiffs have averred the said pleadings in para 4 of the plaint. Now, the proposed amendments are with regard to the execution of registered Revocation of General Power of Attorney dated 10.07.2014 by the 1st defendant revoking the General Power of Attorney dated 14.02.1991. This suit was filed on 20.01.2014. On 01.03.2014, the suit summons was served on the 1st defendant. On 17.03.2014, the 1st defendant has appeared before this Court. On 14.07.2014, the 1st defendant filed his written statement. It appears from the averments made by the 1st defendant in his written statement that he has contended that on 10.07.2014, he has canceled the General Power of Attorney dated 14.02.1991 through a deed of Revocation of General Power of Attorney. It is clear from the above circumstances that between the dates of service of summons to the 1st defendant and filing of his written statement, on 10.07.2014, the 1st defendant executed the registered Deed of Revocation of the General Power of Attorney canceling the General Power of Attorney dated 14.02.1991 executed in favour of the 1st plaintiff. Since, the said document is

executed during the pendency of the present suit, the questioning the legality of the said document by the plaintiff and the pleasings in that regard are just and necessary to determine the real dispute in controversy between the parties to the suit.

12. On perusal of the affidavit averments, it appears that the 1st plaintiff has shown reason for non-seeking the proposed amendment before commencement of trial inspite of his due diligence. No prejudice and injustice will be caused to the defendants if the proposed amendment is permitted. Therefore, the plaintiffs have shown sufficient reason to permit them to amend the plaint as prayed. Hence, I answer the above point in the Affirmative. In the result, I proceed to pass the following :

ORDERS

I.A.No.VII filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure is hereby allowed.

The plaintiffs are permitted to emend the plaint as prayed.

No order as to cost.

(Typed by me in the laptop, printout taken, corrected and then pronounced by me in the open court today on this the 12th day of December 2024).

(VEDAMOORTHY B.S.)

XXXI Addl. City Civil & Sessions Judge,
Bengaluru.