

**Sri Ramkumar, M. Sangeetha, G. Abhirami and G. Vignesh rep. by his  
Mother, S. Jayalakshmi, The Natural Guardian Vs R. Vishnu and Catholic  
Syrian Bank Ltd.**

**Court:** Karnataka High Court

**Date of Decision:** March 24, 2010

**Acts Referred:** Civil Procedure Code, 1908 (CPC) &" Order 6 Rule 17

**Hon'ble Judges:** Ravi Malimath, J

**Bench:** Single Bench

**Advocate:** C. Vinay Swamy, for the Appellant; M.S. Somasekar, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

Ravi Malimath, J.

In the suit, by the 1st respondent seeking for a decree of declaration that the judgment and decree dated 30.06.1998 in

O.A. No. 793/1995 is not binding on the plaintiff, the petitioners filed I.A. No. 8 under Order 6 Rule 17 of CPC for amendment of the written

statement. The trial Court by the impugned order rejected the same. Hence the present petition.

2. Sri. C. Vinay Swamy, learned Counsel appearing for the petitioner contends that the amendment sought for is required for the just and final

adjudication of the suit. He contends that at the time of filing of the written statement, the documents with regard to the court proceedings and tax

paid receipts from the past 30 years were not available. During the pendency of the suit proceedings, the petitioner got the custody of these

documents. He further contends that by virtue of the documents, he can establish the fraud committed by the plaintiff to knock off the suit schedule

property.

3. Sri. M.S. Somasekar, learned Counsel appearing for the respondent defends the impugned order and submits that no interference is called for.

The respondent's Counsel relies on the judgment reported in Vidyabai and Others Vs. Padmalatha and Another, to contend that once the trial has

commenced, an amendment cannot be allowed.

4. Heard Counsels.

5. The petitioner has stated that the cause for filing the amendment to the written statement is due to non-availability of the documents. He submits

that in spite of due diligence, the application could not have been filed earlier due to lack of documents. It is by virtue of these documents that the

petitioner intends to establish before the Court that the plaintiff has committed the fraud and resultantly he is trying to take away the suit schedule

property. The ground urged in the application are bonafide and in spite of due diligence, the said application could not have been filed earlier.

Hence, I am of the considered view that even though the trial has commenced, it is a fit case for allowing the amendment application. The judgment

relied upon by the respondent, even if made application to the case on hand would not debar the Court from allowing the application. The court

being satisfied with the due diligence shown by the petitioner, the amendment requires to be allowed.

6. For the aforesaid, the order dated 13.07.2009 on I.A. No. 8 in O.S. No. 7201/2000 by the IX Additional City Civil Judge, Bangalore is set

aside. I.A. No. 8 is allowed.

7. Learned Counsel for the respondent submits that he will co-operate for the early disposal of the suit, hence, the trial Court shall hear and

dispose off the suit in accordance with law by the end of June 2010.

8. Rule made absolute.