IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.30810 OF 2018 (GM-CPC)

BETWEEN:

SMT. M P PUTTAMMA,
W/O RAMACHANDRAIAH,
AGED ABOUT 46 YEARS,
RESIDING AT NO.10, KHATHA NO.202,
HOSAKEREHALLI VILLAGE,
BANGALORE SOUTH TALUK,
BANGALORE-560085. ...PETITIONER

(BY SRI. GANGADHARAPPA A V, ADVOCATE)

AND:

V CHITTIBABU,
S/O V VARADARAJULU,
AGED ABOUT 51 YEARS,
RESIDING AT NO.18, OPP TO BDA COMPLEX,
21ST MAIN ROAD, B.K.COMPLEX,
BANASHANKARI II STAGE,
BANGALORE-560070. ...RESPONDENT

(BY SRI.ASHOK HARANAHALLI, SR.COUNSEL A/WITH
SRI.ABHINAY Y.T ADVOCATE FOR RESPONDENT)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS AND PROCEEDINGS OF THE CASE AND QUASH THE ORDER DATED 22.06.2018 PASSED BY THE COURT OF THE 63RD ADDL. CITY CIVIL & SESSION JUDGE, BANGALORE CITY (CCH NO.64) ON I.A.NO.ii IN O.S.NO.1541/2017 CERTIFIED COPY OF WHICH IS PRODUCED AS ANNEXURE-E AND BE PLEASED TO ALLOW THE APPLICATION I.A.NO.II AS PRAYED FOR TRUE COPY OF WHICH IS PRODUCED AS ANNEXURE-C. AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS, THIS DAY THROUGH PHYSICAL HEARING, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner being the plaintiff in a suit for declaration & injunction in O.S.No.1541/2017, is knocking at the doors of writ court for assailing the order dated 22.6.2018, a copy whereof is at Annexure-E, whereby the learned LXIII Addl. City Civil Judge, Bangalore City (CCH-64), having rejected her application in I.A.No.II filed u/o VI Rule 17 r/w Section 151 of CPC, 1908, has **declined leave to amend** the plaint for introducing the ground of "easement of necessity" in terms of section 13 (though arguably section 15 is wrongly employed) of the Easements Act, 1882.

2. After service of notice, the respondent-defendant having entered appearance through his counsel, vehmently resists the writ petition making submission in justification of the impugned order and the reasons on which it has been predicated.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant **indulgence on costs** in the matter for the following reasons:

(a) Admittedly, the suit is one for declaration & injunction; the respondent being the defendant is resisting the same by filing the Written Statement; issues are framed, is true; trial is yet to commence, is not disputed; it has been a long settled position of law that ordinarily the request for pre-trial amendments is favoured as a rule and declined as an exception; this approach is not reflected in the impugned order and thus there is an error apparent on its face, that has caused prejudice to the petitioner.

(b) As already mentioned above, the decree sought for in the suit is for declaration & injunction concerning the right of way; the suit as originally founded was on the premise that it is a public way and that the respondent should not interfere with the same; now also the prayer will remain same since what is sought to be introduced by way of amendment to the plaint is only the ground of easement of necessity; thus the nature of the suit does not much change; any amendment would inevitably cause some change and it would cause some prejudice to the other side, is true; what the courts need to see is the enormity of change and the consequent amount of prejudice that the other side would be put to, should leave for

amendment be granted; going by the pleadings and the subject application & the objections thereto, this Court is of a considered opinion that there will be no substantial change in the structure of the suit, if amendment as sought for is sanctioned.

(c) The vehement contention of respondent's counsel that the amendment if sanctioned would amount to permitting the plaintiff to take up inconsistent plea which the law frowns, is bit difficult to countenance; ordinarily, defendants in a suit are permitted to take up inconsistent plea and not the plaintiffs, is true; the Apex Court in **Usha Balashaheb Swami Vs. Kiran Appaso Swami, (2007) 5 SCC 602**, at para 19 observed as under:

> *"It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking* ***inconsistent pleas*** *in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable."*

These observations do not come to the rescue of the respondent inasmuch as the proposition pleaded is not treated as a Thumb Rule by the Apex Court; whether a plaintiff can be permitted to take up inconsistent pleas depends upon a host of factors including the nature of the suit proceedings.

(d) There is yet another reason for not pressing into service the principle of inconsistent pleas; the contention that once the plaintiff frames his suit on the ground of public way, the other ground of easement of necessity tentamounts to a contra plea, does not merit acceptance; Sec.13 of the Act which enacts the easement of necessity presupposes *dominant heritage of one* and the *servient heritage of another*, is true; even then there is nothing repugnant in a public way becoming a dominant heritage, in a limited sense; in other words, there is no contradiction even if it is assumed that the path in question is of public use, the essence of the section being two separate owners and nothing more. An easement requires that some diminution of the natural rights incidental to the ownership of a piece of land is reflected in a corresponding right superimposed on the natural rights

incidental to another piece of land; much deliberation is not warranted since all this is to be debated in the trial of the suit.

(e) The contention of learned counsel for the respondent that the right of the plaintiff to amend his pleadings is not as wide as is conceded to the defendant is supported by the decison of the Apex Court in **Baldev Singh Vs. Manohar Singh, AIR 2006 SC 2832;** the relevant part of para 15 therein reads as under:

> *"...15 That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case."*

This ruling becomes handy in cases where the request of the defendant for leave to amend the Written Statement is to be treated qua the opposition thereto by the plaintiff; the thrust

of the observation is to be viewed from that angle; nothing much in this decision comes to the rescue of the respondent.

(f) There is force in the contention of the learned counsel for the petitioner that the impugned order of the kind is treated as a discretionary one and therefore the Writ Court should not readily interfere with vide **SADHANA LODH VS. NATIONAL INSURANCE COMPANY & ANOTHER, (2003) 3 SCC 524**, in the absence of any culpable error being demonstrated. But, some prejudice is being caused to the respondent by petitioners amendment of the plaint; it is tritely said that there is no prejudice to a party which cannot be compensated by awarding costs and therefore petitioner has to pay the costs.

(g) Learned counsel for the respondent is justified in contending that whether the amendment, if sanctioned, should have retrospective effect or otherwise, needs to be examined by the learned trial Judge while hearing the suit, and therefore that issue is not foreclosed here. It hardly needs to be stated that the court has got discretion to decide the same keeping in view well settled principles which govern the *doctrine of relation back,* after hearing both the stakeholders.

In the above circumstances, this Writ Petition succeeds; the impugned order is invalidated; petitioner's subject application having been favoured, leave is accorded for amending the plaint, subject to she paying a cost of Rs.5,000/- to the respondent within three weeks or before the next date of hearing of the suit, whichever is earlier, failing which the impugned order now set at naught shall resurrect on its own as phoenix, relegating the petitioner to the original plaint.

The petitioner to file the amended plaint within three weeks whereupon the respondent to file the additional Written Statement, if any, within three weeks next following,

All contentions of the parties having been kept open, the learned Judge of the court below is requested to expeditiously try & dispose off the suit in accordance with law.

Sd/-
JUDGE

cbc