

Orders on I.A. No.2.

The Plaintiff has filed this application u/O.VI R.17 of C.P.C. seeking permission to amend the plaint to effect changes at the cause title; to replace paragraph No.1; to insert paragraphs after para No.5, 6, 9 and 10; to replace prayer (a), to insert prayer (b) and (c) after prayer (a) and in the Affidavit annexed to the I.A., the Plaintiff has sworn that the averments made in the original memorandum of plaint inadvertently missed out on a few key points that are consequential to the adjudication of the suit and in said behest have been sought to be incorporated and the additional points are genuinely essential to validate the merits of his case against the Defendants and their incorporation would not cause any harm, injury or prejudice to them. Per contra, he will suffer irreparable injury and be grossly prejudiced if the application is not allowed.

2. Both the Defendants No.1 and 2 have filed their separate objections to I.A.No.2.

2 a) The Defendant No.1 seriously objecting to allow the application and submitted that the terms of JDA are clear and un-ambiguous; there is no ambiguity in the shares of the parties to the suit; the Plaintiff is a party to the JDA and no further loan can be raised without the knowledge and signature of the Plaintiff and further submitted that the application is frivolous, vexatious and speculative in nature and the same is not maintainable

under law or on facts and the same is liable to be dismissed in limine.

2 b) The 2nd Defendant submitted that the Plaintiff is trying to fill in the lacuna's in the plaint and has filed the application that there is no additional or subsequent events that has taken place of the present suit. He has not made a prima-facie case and the affidavit filed in support of the application does not mention the brief facts which brought him to file the application and the same is filed casually and affidavit is not identified by advocate and the application suffer from latches and no proper explanation is offered and the same is devoid of merits and deserves to be dismissed.

3. Heard the arguments of both learned counsels and learned counsel for Defendants No.1 and 2 seriously objected to allow this application.

4. The only Points that arise for consideration are as follows:

1. Whether the Plaintiff has made out a ground to allow this Application?

2. What Order?

5. The answers to the above Points are:

Point No.1 – In the Negative,

Point No.2 - As per Final Order,

for the following:

REASONS

6. **Point No.1:** Admittedly, the Plaintiff herein has filed this suit for the relief of partition and separate possession of his 2/3rd share as per the Joint Development Agreement dated 30-4-2015 along with mesne profits. Even according to the Plaintiff, the suit property was jointly purchased by the Plaintiff and 1st Defendant under a registered sale deed dated 28-7-2014 for valuable sale consideration amount and since from the date of purchase of the suit property, they were in joint possession and enjoyment of the same and subsequently they have mutually and amicably divided the property under a registered partition deed dated 1-12-2014 which was duly registered before the office of Sub-Registrar and alter thereon he entered into a JDA along with Defendants on 30-4-2015 and the same was also been registered office of Sub-Registrar and as per the terms of the sharing of developed area, the owner of the Plaintiff is entitled for 50% of the super built up area, 2nd party, i.e., Defendant No.2 is entitled for 50% of the super built up area. It is his case that subsequent to the JDA, the Plaintiff and Defendant No.1 executed a registered GPA on 30-4-2015 in favour of 2nd Defendant who is the developer and conveyed the property for development and as per the JDA, he is entitled for 2/3rd share in the property. It is his case that the Defendants No.1 and 2 colluding with each other, trying to enjoy the entire income derived from the

constructed building and they have not allotted any share in his favour of as per the terms of the JDA and as such, without any alternative he approached this Court and filed this suit.

However, the Defendants 1 and 2 have appeared before the Court and filed their separate Written Statement wherein the Defendant No.2 has also stated that apart from the JDA dated 30-4-2015 there is a supplementary agreement dated 10-11-2016 and this Plaintiff has not referred the supplement sharing agreement in this proceedings and he, by suppressing all the material facts, approached this Court and filed this suit.

Even the Defendant No.1 has seriously denied the right, title and interest of the Plaintiff over the suit property by filing his separate Written Statement and even the Defendant No.1 prays to dismiss the suit of the Plaintiff.

Subsequently after Defendants have filed their Written Statement and taken up this defence, the Plaintiff has come up with this application seeking permission to delete the existing paragraphs from the cause title along with Paragraphs 1, 5, 6 and in its place he prays for insertion of other paragraphs as disclosed in this application. The Plaintiff has also prayed for deletion of existing prayer sought by him and prayed to insert a new prayer by praying for issuance of direction to the

Defendants to pay appropriate share of the rental amount that has accrued and prayed for partition and separate possession of half share out of 50% share as per the JDA and likewise he prayed for call for bank statements from the Defendants.

7. The Plaintiff, through this amendment, wanted to change the entire plaint averments and he wanted to insert the subsequent paragraphs. He wanted to amend the prayer itself sought by him in this suit. The amendment proposed by this Plaintiff not only changes the entire nature of suit, but also changes the cause of action. Through this amendment, the Plaintiff is intending to amend the entire nature of the suit. It is well settled principles of law that if the amendment application changes the nature of suit and also the cause of action, such application is not maintainable. No doubt, the Plaintiff has filed this application before commencement of the trial and admittedly the trial is yet to be commenced, however, only on this ground, the application cannot be allowed and this Plaintiff is not permitted to change the entire nature of the suit along with prayer sought by him. As I have discussed supra, the amendment sought by the Plaintiff changes the nature of the suit and he same is not permissible under law. The Plaintiff has not made out any good valid grounds to allow this application. The arguments canvassed by the learned counsel for the Plaintiff that while preparing the plaint, by inadvertence and oversight, some of the vital aspects have been left out

and this Plaintiff through this amendment application narrating all the true and material facts and the same is required for proper adjudication of the case, is not convinced this Court. The application filed by the Plaintiff is not maintainable. Hence, I have answered Point No.1 in the Negative.

8. Point No.2: For the aforesaid reasons, this Court proceeds to pass the following:

ORDER

The application filed by the Plaintiff u/O.VI R.17 of C.P.C. as per I.A.No.2, is hereby dismissed.

Issues framed.

For List of witnesses and documents by
17-09-2021.

(Ishrath Jahan Ara)
III A.C.C. & S.J., Bengaluru.