

15/02/2019

For orders,

**ORDERS ON IA NO.XI & XII UNDER  
ORDER VII RULE 14 R/W SEC.151 OF CPC &  
UNDER ORDER VI RULE 17 OF CPC**

The plaintiff counsel filed the above applications praying to permit them to produce the additional documents and permit to amend the plaint as mentioned in the application in the interest of justice.

2. In the annexed affidavits, it is stated that defendants are trying to encroach into and usurp the suit schedule property belonging to the plaintiff which necessitated the filing of the above suit against the defendant for permanent injunction restraining them from encroaching into the suit schedule property or disturbing their peaceful possession and enjoyment of the suit schedule property. At the time of filing the suit, certain documents were not available with him. These documents are relevant and necessary for the proper adjudication of the case. Recently he learnt from the representative of the defendant

society of certain legal proceedings in respect of the suit schedule property and certain transactions entered into by the 4<sup>th</sup> defendant society with the original land owners whereby the original land owners have executed Declaration cum Rectification Deeds transferring the lands to the defendant Housing Society and confirming the possession in the 4<sup>th</sup> defendant Housing Society through the Society to its allottees. He was unaware of these developments and was not privy to it. These facts came to his knowledge during his interaction recently with the representative of the 4<sup>th</sup> defendant society one Mr.Vijayakumar, the President of the Society. Hence, prayed that allow the applications.

3. The defendant counsel filed objections to the above applications stating that the applications are not maintainable in the eye of law. The plaintiff is well aware of the facts and circumstances of the case and the affairs of the 4<sup>th</sup> defendant society. She is also very much aware of the brief facts in respect of the suit schedule property before she purchase much less when this defendant filed his written statement,

some of the additional document and additional pleadings which are now sought to be produced by the plaintiff were in existence much earlier to his purchase and more particularly when the suit was filed. The plaintiff deliberately intent to left out in bringing these facts at the time of filing the suit in order to mislead this Court. The defendant is in rightful possession and enjoyment of the suit schedule property as absolute owner by virtue of the registered sale deed. Despite of knowing the knowledge of the unlawful and illegal transaction and correspondence between the society and competent authority, the plaintiffs have not stated to in her pleadings. Hence, plaintiff has conveniently avoided to bring those documents alongwith the pleadings at the time of filing of the said suit. The amendment plaintiff has sought is irrelevant to the facts of her case and only on elaboration to the earlier plaint pleadings. When the plaintiff is admitting the allotment of site by 4<sup>th</sup> defendant, she is estopped from questioning the title of original landlord and the fraud played on the original owners by the 4<sup>th</sup> defendant society. The documents alleged to have been

issued by Bruhat Bengaluru Mahanagara Palike Surveyor of TDR attached to land acquisition Bruhat Bengaluru Mahanagara Palike and alleged layout plan are not issued by the competent authority as the same are not certified copy from the competent authority. The compromise petition and the decree passed in O.S.No.6486/2003 are the documents obtained in the year 2016, hence some of the documents which are now sought to be produced are well within the knowledge at the time of filing of the suit and were also in possession at the time of adducing her evidence in chief. Hence, prayed that dismiss the applications.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application I.A. No.XI and XII filed by the plaintiff deserves to be allowed ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

**REASONS**

6. **Point No.1:** The plaintiff has filed the suit for permanent injunction against the defendant in respect of the suit schedule properties. When the case was posted for cross-examination, at that time plaintiff counsel filed the above applications. The plaintiff in her proposed amendment has narrated and elaborated the pleadings with respect to acquisition of land for formation of residential layout and also facts of the case. Per contra, it is the specific case of the defendant that proposed amendment is not necessary and plaintiff is well aware of the facts and circumstances of the case and affairs of 4<sup>th</sup> defendant society and she is also very much aware of the brief facts of the suit schedule property before she purchased much less when the defendant has filed his written statement. On perusal of proposed amendment, it reveals that plaintiff has narrated the brief facts of the case and said proposed amendment will not change the nature of the suit. In my view, if the application is allowed on cost, it

would met with justice and also avoid multiplicity of proceedings. The proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and also avoid multiplicity of proceedings. Further, defendant has got every right to verify the documents at the time of marking the same and also got every right to question the documents at the time of cross-examination of P.W-1. Both the parties have got every right to defend their cases. Hence, plaintiff has made out reasonable grounds to allow the application. Accordingly, I answer point No.1 in the Affirmative.

7. Point No.2 : In the result for the foregoing reasons, I pass the following :

**ORDER**

I.A. No.XI under Order VII Rule 14 R/w Sec.151 of Code of Civil Procedure filed by the plaintiff is herewith allowed on cost of Rs.250/-.

I.A.No.XII under Order VI Rule 17 of Code of Civil Procedure filed by the plaintiff is herewith allowed on cost of Rs.1,500/- permitting the plaintiff to amend the plaint and

O.S.No.1797/2014

**furnish the amended plaint copy.**

**For costs and to amend the plaint call on  
20/02/2019.**

(Dictated to the Judgment Writer, transcribed by her, transcribed by her, corrected and then pronounced by me in open court this the 15<sup>th</sup> day of February, 2019.).

**(NAGAVENI)  
V ADDL.CITY CIVIL JUDGE  
BANGALORE**