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**IN THE COURT OF LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU (CCH-84)**

**Present: Sri S. Sudindranath, LL.M., M.B.L.,
LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU.**

COM.OS.No.163/2023

Dated on this 1st day of October 2024

Plaintiff

Sri.P.C.Harimahesh.

(By Sri.S. Venkatesh, Advocate)

// versus //

Defendants

Balaji Enterprises and others

(By Sri.B.P. Puttasiddaiah, Advocate)

I.A.No.IV

**Applicant/
Plaintiff**

Sri.P.C.Harimahesh
S/o late P.M.Chikkagangaiah,
Resident of No.544,
Government Hospital Road,
2nd Block, Peenya, Bengaluru-58.

(By Sri.S. Venkatesh, Advocate)

// versus //

**Respondents/
Defendants**

1. Balaji Enterprises
By its Proprietor
K.P. Singh
S/o late H.K.Singh,
Major, No.114/C, Opposite to

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Peenya Metro Station,
Next to Prabhakar Kore
Convention Hall,
Peenya, N.H.4,
Tumkur Road,
Bengaluru-560058.

2. Smt.Supriya,
W/o P.C. Harimahesh,
Aged about 48 years,

3. Sri.P.H.Shrihari Prasad,
S/o P.C.Harimahesh,
Aged about 27 years,

Respondents 2 and 3 are
R/at No.975, 8th Main,
9th 'A' Cross, West of Chord Road,
Mahalakshnipuram,
Bengaluru-560086.

(By Sri.B.P. Puttasiddaiah, Advocate)

(I)	Provision under which the application is filed and	Order VI Rule 17 of CPC
(ii)	relief sought	Amendment of the plaint.
(iii)	The date on which the application is filed	12-09-2024
(iv)	Number of the application	IA No. 4
(v)	The date on which the objections are filed by different opponents	25-09-2024
(vi)	The date on which the orders were passed on the said application	01-10-2024

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ORDERS ON IA No.4

This is an application filed by the Plaintiff under Order 6, Rule 17, CPC for amendment of the plaint, in order to amend the suit schedule property, to show the same as consisting of metal shed instead of three floors RCC building.

2. The defendants have filed detailed objections to the present application.

3. The stage of the main suit is for plaintiff's evidence.

4. I have heard the arguments of both sides and perused the records of the case.

5. The only point that arises for my consideration is :-

Whether the present IA No. 4 filed by the plaintiff under Order 6 Rule 17 CPC deserves to be allowed and the plaintiff should be permitted to amend the plaint as sought for in IA No. 4?

6. My answer to the above point is in the **affirmative** for the following :-

REASONS

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7. The facts in the brief are that, originally, the present suit was filed by the plaintiff only against defendant No. 1 for ejectment, arrears of rent and damages. The case of the plaintiff in brief is that, the plaintiff is absolute owner of Suit Schedule Property and defendant No. 1 is the tenant under the plaintiff whose tenancy has been terminated by legal notice dated 14-09-2022 and therefore defendant No. 1 has no right to continue in possession and apart from that defendant No. 1 is in arrears of rent and is also liable to pay damages for his unlawful occupation of Suit Schedule property after termination of tenancy, and thereby suit was originally filed only against Defendant No. 1 for ejectment, for recovery of arrears of rent of Rs. 18 lakhs and also for damages for unlawful occupation of Suit Schedule property after termination of tenancy.

8. The Defendant No. 1 entered appearance and filed Written Statement denying the jural relationship of landlord and tenant and contending that, in fact, the wife and son of the plaintiff have inducted the defendant No. 1 as the tenant of Suit Schedule property and therefore they are also

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necessary parties. Thereby, termination of tenancy was denied since jural relationship was denied and it was contended that, the defendant No. 1 has been regularly paying the rent to his landlords, namely Defendant No. 2 and 3 and thereby, the claim for recovery of arrears of rent was also denied and since the termination of tenancy was denied, Defendant No. 1 also denied the liability to pay damages. Various other legal contentions were raised to seek dismissal of the suit.

9. Thereafter, the defendant No. 2 and 3 filed application to implead themselves as parties in the present suit, on the ground that they are the proper and necessary parties and the said application was allowed by orders of this court dated 15-04-2024. After their impleadment, the defendant No. 2 and 3 have filed detailed written statement contending that the suit schedule property is in fact the joint family property of the plaintiff and defendant No. 2 and 3, and it is defendant No. 2 and 3 who had let out the suit schedule property to the defendant No. 1. Denying all other plaint averments and taking up contention in consonance with contentions taken

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by defendant No. 1, the defendant No. 2 and 3 prayed for dismissal of the suit.

10. Issues have been framed and the matter is at the stage of evidence. At this stage plaintiff has come up with the present application for amendment of the plaint. Under the present application, the only amendment sought for by the plaintiff is to rectify the plaint schedule to delete reference to 3 floors RCC building and instead incorporate that suit schedule Property consists of metal shed. In the affidavit in support of the present application, it is stated that due to typographical error, mistake has crept in while describing the property in the suit schedule and to correct the same, present application is filed.

11. In the objections filed by the defendants, it is principally contended that, the amendment if allowed will change the nature of this suit and it is also contended that, the application is filed belatedly only to drag on the matter and harass the defendants.

12. Having considered the rival contentions of both sides, it is to be noted that, in the plaint, it is stated that Suit

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Schedule property consists of three floors RCC building.

Now, the plaintiff wants to rectify the same to delete reference to three floors RCC building and instead incorporate that suit schedule Property consists of a metal shed.

13. It is to be noted that, in the written statement of Defendant No. 2 and 3 at page 3, it is specifically contended that, the description of the suit schedule Property in the plaint is erroneous since Suit Schedule Property consists of sheet shed and not three-floor RCC building as claimed in the plaint. Therefore, it is noted that, the contention is already taken by Defendant No. 2 and 3 that there is a mistake in the Plaint schedule in referring to suit schedule property as three floors RCC building and instead it is only sheet roofed shed. It is precisely to bring the suit schedule in consonance with the above objection that, present application is filed to delete reference to three floors RCC building and instead incorporate that suit schedule property consists of a shed. Therefore, it is clear that, there is a mistake in the Plaint schedule and to correct the same, the present application is filed.

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14. Therefore, the amendment is necessary to decide the real matter in controversy between the parties and to ensure that the suit is not defeated due to technical error in description of the suit schedule property. The contention of the defendants that, allowing the amendment will change the nature of the suit cannot be accepted because the amendment is only to change the description of the suit schedule property and the relief sought and all other pleadings in the plaint remain the same and therefore, by allowing the amendment, it will not change the nature of the suit. The further contention that application is liable to be rejected due to delay and laches also cannot be accepted because, soon after filing of the written statement by defendant No. 2 and 3, highlighting the defect in the description of the suit schedule property, the present application is filed.

15. Ultimately, it is to be noted that, the suit should not be allowed to be defeated on technical grounds and instead the suit has to be considered on its merits. Therefore, to avoid technical defect, it is necessary to permit the plaintiff to

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amend the suit schedule to correct the description of Suit Schedule property from three-story building to shed. Accordingly, the application deserves to be allowed, but, considering the stage at which present application is filed, in my view, cost of Rs. 3,000 has to be imposed as a precondition for allowing the application. According, answering the point for consideration in the **affirmative**, I proceed to pass the following :-

ORDER

IA No. 4 filed by the plaintiff under Order 6 Rule 17 CPC for amendment of the plaint is allowed and Plaintiff is permitted to amend the plaint as prayed for in IA No. 4, subject to cost of Rs. 3,000/= payable by plaintiff to the defendants.

[Dictated using Dragon Professional Speech Recognition Software Version 15.3, transcript revised, corrected, signed and then pronounced by me in open court on this the 01st day of October, 2024]

**(Sri. S. Sudindranath)
LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT; BANGALORE.**

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