

KABG040004282014

**ORDERS ON I.A.NO.XVIII**

The plaintiff filed I.A.No.XVIII U/o. VI Rule 17 of CPC praying to permit him to amend the plaint and insert contention with respect to declaration and prayer of declaration in the interest of justice.

2. In the affidavit sworn to an application the plaintiff's power of attorney holder stated that his counsel has not made prayer of declaration in this suit as the defendant has denied his ownership over the suit property in the written statement, therefore, it is necessary that the prayer of ownership of rights is required to be inserted in the plaint. It is stated that the defendant has unauthorised construction over suit property and dispossessed the owner from the suit property. Hence, plaintiff constrained to add certain fact in the plaint, which is necessary for proper disposal of the suit. The amendment sought is necessary and important for the decide the suit. If the application is allowed, no loss or prejudice will be caused to the defendant. With these contentions, the plaintiff prayed to allow the application.

3. The defendant filed objections to the application, contending that the contents of the application are false, frivolous and vexatious. The defendant contended that only to overcome the contentions in the cross of PW.1 and contention taken in the written statement. It is stated that plaintiff has filed this application only to bring the new version of his claim and he is making improvisation of his plaint, it cannot be allowed and deserves to be rejected with costs. The proposed amendment will change the nature of the suit and cause of action pleaded in the suit, which is not permissible in law. The claim of the plaintiff is time barred. It is stated that the defendants by

spending more than Rs.30,00,000/- have constructed the building and plaintiff want claim possession without paying the court fee on the said amount. Therefore, the proposed amendment is liable to be rejected. With these contentions the defendants prayed to reject the application with costs.

4. Heard and Perused the records.

5. Now, the points that arise for consideration are as under;

1. Whether plaintiff has made out grounds to allow the application?

2. What order?

6. Answer to the above points are as under;

Point No.1: In the Affirmative

Point no.2: as per the final order for the following

REASONS

7. **Point No.1:** The plaintiff filed this is suit for mandatory and permanent injunction against defendants and the case is posted for further plaintiff evidence. At this stage, the plaintiff filed this application praying to permit her to amend the plaint and insert prayer with respect to declaration of her ownership over the suit property and also contentions with respect to the declaration in the plant. The defendants objected to the application contending that the application filed by the plaintiff is not maintainable. The amendment sought by the plaintiff will change the nature of the suit and also the relief claimed barred by time. The defendants also contended that only

to overcome the admissions at evidence the plaintiff has filed this is application

8. On perusal of the entire pleadings the defendants have taken contentions that they have constructed house completely and they are in possession, the suit of the plaintiff mere for the relief of permanent injunction is not maintainable without seeking the relief of declaration. It is argued by the defendants that suit was filed in the year 2014 and the plaintiff filed this application after lapse of 10 years on the same cause of action, which is not maintainable. If the application is allowed it will be barred by limitation. On perusal of the pleadings, initially the defendants have not taken specific contentions with respect to prayer of declaration, in the additional written statement the defendants have taken contentions that without seeking the relief of declaration, the suit of the plaintiff is not maintainable.

9. It is true that the defendants have taken contentions with respect to not seeking the relief of declaration in the additional return statement which was filed in the year 2016. After lapse of 6 years the plaintiff filed this application seeking for amendment of plaint. In support of her contention the plaintiff relied on ***T.V.Ramakrishna Reddy Vs M. Mallappa and another, HCR 2022 S.C.153***, wherein the Hon'ble High court of Karnataka held that a suit for mere injunction does not lie only when defendant raises genuine dispute with regard to title of plaintiff. Where plaintiffs title is not in dispute, suit for injunction could be decided with reference to finding on possession. If matter involves complicated question of law relating to title, court will relegate parties to remedy by way of comprehensive suit for declaration of title instead of deciding the issue in a suit for mere injunction.

10. It is true that amendment sought by the plaintiff is to be considered by observing the provisions with respect to limitation. Though, plaintiffs have taken this contention at belated stage but, the question of limitation is a mixed question of law and facts, it has to be allowed subject to limitation. The ***Hon'ble Supreme court in Sampath Kumar V. Ayyakannu and Another, reported in AIR 2022 SCC 3369*** held the “an amendment once incorporated relates back to the date of suit. However, the doctrine the relation back in the contacts of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the applications seeking the amendment was filed”.

11. In the present case in view of the contentions of the defendants in their written statement plaintiff filed this applications seeking permission to amend the plaint. In the circumstances the applications filed by the plaintiff has to be allowed for complete adjudication of the matter. But the amendment sought by the plaintiff should be considered subject to limitation and the extent of amendment shall be permitted that it has been brought before the court on the date of application filed by the plaintiff. Further, If plaintiff contends some facts the burden is him to prove the said facts by producing the cogent evidence. In the circumstances, the application filed by the plaintiff has to be allowed in the interest of justice. Hence, I proceed to pass the following:

ORDER

I.A.No.18 filed by the plaintiff U/o.
VI Rule 17 of C.P.C is hereby allowed
subject to limitation.

The plaintiff is permitted the
amend the plaint. But the extent of
amendment shall be deemed to have
been brought before the court on the
date on which the plaintiff filed this
application for amendment.

For amendment and amended
plaint. Call on 14.02.2024

Sd/-
III Addl. Civil Judge & JMFC,
Belagavi.