

IN THE COURT OF THE IV ADDL.CIVIL JUDGE & J.M.F.C.,
BELAGAVI

AT : BELAGAVI

PRESENT

SHRI.SAMEER G. KOLLI,
B.A.L., LL.B.,
IV ADDL.CIVIL JUDGE & J.M.F.C,
BELAGAVI

Original Suit No.877/2008

DATED THIS THE 27TH DAY OF JULY, 2018

Plaintiffs:-

1. Shri.Suresh S/o Shantaram Khanolkar,
Age: 70 years, Occ: Business,
R/o: Plot No.142/14, Nanawadi,
Belgaum and others.

(By Shri.S.G.Ganachari, Advocate)

V/s

Defendants:-

1. M/s Chaitanya Constructions,
A concern engaged in the Business as
Builder, Promter & Developer,
C/o Plot No.142/15, Nanawadi,
Belgaum represented by Shri.Sudhir Lad
and another.

(D-1 by Sri.S.S.Mirji, Advocate
D-4 by Sri.R.G.Kulkarni, Advocate)

Orders on I.A.No.22

I.A.No.22 is filed by the plaintiff No.1(b) U/o. 6 Rule 17 of CPC
praying that in clause (a) and clause (b) of the prayer column
plaintiff intends to replace the word defendants instead of
defendant No.1.

2. In the affidavit accompanied to I.A.No.22, it is sworn that the present suit is filed against the defendants for the relief of declaration and consequential relief of permanent injunction. It is further sworn that defendant No.4 to 11 being the owners of property bearing No.142/15 of Nanawadi, Belagavi and in that regard seeking relief against those defendants is also necessary and the proposed amendment is formal in nature, does not change the nature of suit nor cause of action. With these contentions plaintiffs have prayed for allowing I.A.No.22.

3. Defendant No.1 has filed objections to I.A.No.22 stating that plaintiff cannot seek the relief of declaration and consequential relief of injunction against defendant No.3 to 11. It is further contended that defendant No.2 is a city corporation and an order of injunction cannot be sought against the city corporation. With these contentions it is stated that the amendment sought is not proper and hence, the I.A. needs to be rejected.

4. Defendant No.2 has also filed his statement of objections contending that if the proposed amendment is allowed then it would amount to seeking relief of declaration and injunction against defendant No.2 also but, defendant No.2 is only a formal party and hence, question of seeking relief of declaration and injunction against defendant No.2 does not arise. With these contentions defendant No.2 has prayed for rejection of I.A.No.22.

5. Upon hearing the parties, following points arise for my consideration.

1. Whether the plaintiffs have made out a case to amend their prayer and replace the word defendants in place of defendant No.1 at the present stage of the suit?

2. What order?

6. Heard learned counsel for the respective parties.

7. Perused materials placed on record.

8. My findings for the above points are as under:-

Point No.1 : In the affirmative

Point No.2 : As per final order for the following:

REASONS

9. **Point No.1:-** Admittedly, the present suit is for the relief of declaration and permanent injunction against defendant No.1. Learned counsel for the plaintiffs during the course of his arguments submitted that the present amendment does not change the nature of suit nor cause of action and as defendant No.3 to 11 were impleaded as parties to the present suit, seeking relief against them is necessary to avoid technicalities and future complications in respect of the subject matter of the suit. He further submitted that if the proposed amendment is allowed, neither it changes the cause of action nor the cause of the suit.

He has also placed reliance upon the 3 decisions of the Hon'ble Supreme Court and Hon'ble High Court of Karnataka. With these he concluded his arguments by praying to allow I.A.No.22.

10. Learned counsel for defendant No.1 submitted that the case is now posted for arguments and at the fag end of the trial the plaintiff is seeking to amend the prayer which is not permissible. She further submitted that though no due diligence is pleaded in the statement of objections of defendant No.1, the stage of the suit also matters and the relief of declaration and injunction against corporation cannot be sought. With these contentions she prayed to dismiss I.A.No.22.

11. Per contra, learned counsel for defendant No.2 also submitted that defendant No.2 is a formal party and seeking the relief of declaration and injunction against defendant No.2 which is the city corporation does not arise and hence, he submitted that the present application is not maintainable at the stage and prayed to reject I.A.No.22.

12. Having heard the learned counsel for the respective parties, no doubt the stage of the present suit is for arguments but, it is also to be seen that whether the proposed amendment sought by the plaintiffs in the present suit does amount to any new cause of action or does change the nature of the suit. If this aspect is taken into consideration, in my considered view the plaintiffs are only seeking to replace the word defendants in

place of defendant No.1 i.e. plaintiffs are seeking relief against all defendants and not only defendant No.1.

13. It is also pertinent to note that while considering the application for amendment, the Court should not go into the correctness or incorrectness of the case for amendment and no finding on the merits of the amendment can be recorded. Whether the proposed amendment is correct or incorrect can be considered only at the time of appreciation of evidence. Apart from this, though both defendants have filed their objections to I.A.No.22, none of them have contended that the plaintiff has not shown due diligence, as mandated under proviso to Order 6 Rule 17 of CPC. As discussed in the above paragraph, the present amendment neither changes the nature of suit nor cause of action and when this is so, it would not be a hardship on any defendant if the said amendment is allowed.

14. Had the proposed amendment changed the nature of suit nor had it amounted to a new or subsequent cause of action then obviously the proposed amendment needs to be rejected. But, as stated above it does not amount to any new cause of action nor it does change the nature of the suit.

15. Hon'ble Supreme Court had an occasion of discussing the above issue in the case of **Rajesh Kumar Agarwal V/s**

K.K.Modi reported in **(2006) 4 SCC 385** wherein, it is held as under:

“While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.”

15. It is further held in the above decision as under:

“The object of Order 6 Rule 17 is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining real question in controversy between the parties.”

16. Learned counsel for the plaintiffs has also relied upon a decision of the Hon'ble High Court of Karnataka in the case of **Puttamaramma (Smt) V/s Giriyappa and others** reported in **HCR 2016 Kant. 39**. Wherein, it is held as under:

“While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and

the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

17. Learned counsel for plaintiff has also relied upon another decision of the Hon'ble Supreme Court in the case of **Mount Mary Enterprises V/s M/s Jivratna Medi Treat Pvt. Ltd.** reported in **[2015] SCCR 220**. Wherein it is held as under:

“Amendment application should be normally granted unless by virtue of amendment, nature of suit is changed or some prejudice is caused to defendant-Nature of suit was not to be changed by virtue of granting amendment application because appellant-plaintiff had submitted application for amendment so as to give correct value of suit property in plaint-Application for amendment allowed.”

18. On Perusal of the above decisions of the Hon'ble Supreme court and Hon'ble High Court of Karnataka, it is crystal clear that the proposed amendment neither changes nature of suit nor the cause of action and the correctness of the proposed amendment cannot be looked into at the present stage. Hence, I do not find any reason to reject I.A.No.22. For the above discussion, I answer point No.1 in the affirmative.

19. **Point No.2:-** For discussion made on point No.1, following order is passed.

ORDER

I.A.No.22 filed by the plaintiffs U/O 6 Rule 17 of CPC is hereby allowed.

Plaintiffs are permitted to amend their plaint only to the extent sought for in I.A.No.22.

Plaintiffs shall carry out amendment and furnish amended plaint on or before 03-08-2018.

(Dictated to the Stenographer, the transcript thereof is revised, edited and corrected by me and then pronounced in the Open Court on this the 27th day of July, 2018).

sd/-
(Sameer G. Kolli)
IV Addl.Civil Judge &
JMFC, Belagavi