



ORDERS ON I.A.I FILED U/O. VI RULE 17 OF CPC

At the stage of plaintiff evidence , the present application is filed by plaintiffs seeking permission to amend the plaint as detailed in the application.

2. Said application is accompanied with an affidavit of the plaintiff No.1, wherein he has stated that he intend to amend the plaint by way of adding a new para 3(a) after para No.3 and also in para No.6 of the plaint. By the proposed amendment, he wants to aver the fact of the tenant in occupation of his premises and part of the premises of defendant in CTS No.625. At the time of filing the suit, due to oversight and inadvertence, he did not mention the occupation of his portion of property by the tenant. He realized the same at the time of preparing his evidence. By the said amendment, the nature of the suit or cause of action will not change. On the contrary, it will help the Court to decide the case in more effective manner and no loss will be caused to the defendant, if the proposed amendment is allowed. On the other hand, he will be put to irreparable loss, if the amendment is not allowed. Hence, they prayed to allow the application.

3. The said application is resisted by the defendant by filing objection to application, wherein it is contended that the contents of the application is false. This application is filed at belated stage i.e after framing the issues, hence it is not maintainable. This application is filed only to fill up the lacuna and to drag on the matter and to harass him. Further proposed amendment will change the nature of the suit and cause of action. Further case is already posted for evidence, hence amendments cannot be allowed at the belated stage. If the application is rejected, no loss or hardship will be caused to the plaintiffs. If application is allowed, he will be put to irreparable loss. Hence, prayed to reject the application.

4. Heard the arguments . Perused the records.

5. On the basis of the above facts, the following points that arise for my consideration are;

1. Whether I.A. No.1 deserves to be allowed?

2. What Order ?

6. My answer to the above points are;

Point No.1 : In the Affirmative;

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

REASONS

7. **Point No.1:-** The plaintiff has filed the present application seeking amendment in the plaint that in CTS No.625 except 3 rooms at the southern side was let out to one Shri. Siddramappa Dundappa Gadavi as tenant in the year 1963 who was doing business in the premises in the name and style of "Shri. Mallikarjun Whole Sale Stores". Further contend that after partition, an extent of half share in northern side portion in CTS No.625 fallen to the share of plaintiffs and father of defendant became owner to the extent of half share of the southern side portion. One Chandrashekhar and his family residing in 3 rooms and remaining portion was occupied by the tenant. The plaintiff intend to insert the above amendments in the plaint and contending that at the time of filing of the suit, due to oversight and inadvertence, he did not mention the occupation in his portion of property by the tenant. Further the plaintiff by way of amendment would intend to insert that averments that " the plaintiff told the defendant that there is tenant . The defendant told the plaintiff that he would convince the tenant and get the possession from the tenant the portion that the plaintiff would give to him for his business and that in the remaining portion, the tenant would carry his business." The same is realized by him at the time of preparing his evidence.

8. On the other hand, the defendant objected the amendment contending that the present application is filed after lapse of so many days and after framing of issues at the belated stage. It is pertinent to note that the plaintiff contented that in some portion of his property was in occupation of the tenant. Farther, it is pertinent to note that the present suit is filed by the plaintiff seeking possession of the suit property. The burden is on the plaintiffs to prove the facts averred in the amendment application. The amendment sought by the plaintiffs does not change the nature of the suit or cause of action. The present application is filed when the matter is posted for plaintiff evidence. The plaintiff has not commenced his evidence. As the plaintiff has filed the present amendment application at the stage of plaintiff evidence , the present application has to allowed on some costs . Accordingly, point No.1 is answered in the Affirmative.

9. **Point No.2:-** In view of above discussion, I proceed to pass the following;

ORDER

**IA.No.I filed by the plaintiffs U/O.6 Rule 17 of
CPC is hereby allowed on cost of Rs. 400/-**

The plaintiff is permitted to amend the plaint as detailed in the amendment mentioned in the application.

To carry out amendment and to file amended plaint by 11-10-22.

IV Addl. Civil Judge & JMFC.,
Belagavi.

