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**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

Present : **SHRI. GANAPATI BHAT**, B.Sc.,L.L.B., L.L.M.,
Prl. Civil Judge & J.M.F.C., Belagavi.

Dated : This, the 13th day of February-2023

ORIGINAL SUIT NO.451/2009

PLAINTIFFS :

1	Shri. Kiran S/o. Dhondopant Thakur & another.
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Vs.

DEFENDANTS :

1	Shri. Janaba S/o. Laxman Khorade, Deceased, R/by his legal heirs & others.
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RANK IN I.A.No.XX

APPLICANTS / ORI. PLAINTIFFS :

1	Shri. Kiran Thakur and others.
	(By Shri. S. S. Kulkarni, Adv.)

Vs.

OPPONENTS / ORI. DEFENDANTS :

1	Shri. Khorade and others.
	(By Shri. V. S. Deshpande, Adv.)

ORDER ON I.A.NO.XX

This is an application filed at the stage of hearing. This is an application filed by the applicants/plaintiffs U/O.VI Rule 17 R/w. Sec.151 of C.P.C. seeking to amend the plaint.

2. The facts in brief stated in the affidavit are as follows :

The plaintiffs have stated that they have filed a suit for Perpetual and Mandatory Injunction. They have further stated that due to clerical error, there is a mistake in the schedule of the property. They have further stated that they are inserting the correct description in the suit property by way of amendment. The nature of the suit will not be changed by way of amendment. They have further stated that the amendment of plaint is necessary to decide the dispute in just and proper manner. Hence, they prayed to allow the application.

3. The defendants No.1 and No.2 have filed the objections to the present application.

4. The facts in brief stated in the objections are as follows :

These defendants have denied the allegations and contentions in the plaint. They have stated that the application is not maintainable and the present amendment application is a belated application. They have further stated that the proposed amendment will change the

nature of the suit and it is unnecessary. They have further stated that the present application is filed to delay the matter. They have further stated that the application is not maintainable in view of the proviso inserted to the Order VI Rule 17 of C.P.C. Hence, they prayed to reject the application.

5. Heard both sides. Perused the entire materials available on record.

6. Now, the points arise for my consideration are :

POINTS

1) Whether the applicants/plaintiffs have made out grounds to allow the amendment application?

2) What Order?

7. After hearing the arguments and on considering the relevant materials on record, my findings on the above points are hereunder :

Point No.1 : In the Affirmative,

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

REASONS

8. POINT NO.1 : The learned counsel for the plaintiffs has argued that the amendment is sought to furnish the correct description of the suit property. The mistake is due to oversight and clerical error. He has further argued that the proposed amendment is just and necessary for proper adjudication in this suit. He prayed to allow the application.

9. Per contra, the learned counsel for the defendants No.1 and No.2 has argued that the application is filed after conclusion of the trial and same is filed to delay the disposal of this suit. He has further argued that the requirements of due diligence is absent in this application, though the proof of due diligence is required when the amendment application is filed after conclusion of the trial. He has further argued that the proposed amendment is unnecessary and not required. He has further argued that even if the proposed amendment is allowed, then also it will not give the correct and proper description of the suit property. Hence, he prayed to reject the application.

10. He has relied on the rulings reported in (2012) 1 SCR 295 and 2018(1) Civil L. J. 702.

11. In this case, the plaintiffs have sought for the amendment of description of the suit property. They intend to rectify the survey numbers of 'A' schedule and 'B' schedule properties. They have stated that this description is due to oversight and clerical error. In this suit, recently the commission application is filed. The plaintiffs have stated that from the commissioner application, they came to know about the mis-description in the description of the suit property.

12. It is a settled principle of law that the Court can call better particulars as to description of the suit property, whenever necessary. The plaintiffs have stated that they intend to give the correct description of the suit property. Hence, the proposed amendment will not change the nature of the suit.

13. In the first ruling i.e., in the case of **J. Samuel & Ors. Vs. Gattu Mahesh & Ors., ruling reported in (2012) 1 SCR 295**, the Hon'ble Supreme Court has elaborately discussed the term due diligence and typographical error.

In the said case, the plaintiff therein had omitted to plead the essential ingredients and thereafter he intends to add the same. The Hon'ble Supreme Court has held that such an attempt to insert the mandatory requirement by way of amendment is not permissible.

14. The Hon'ble Supreme Court has held that proof of due diligence is required in such cases. This ruling is not applicable to the case on hand, because in this suit, the plaintiff is seeking rectification in the description of the suit property.

15. In the second ruling i.e., in the case of **Smt. B. S. Leelavathi (Since Dead) by her LR Vs. Mahadevaiah, ruling reported in 2018(1) Civil LT 702**, the Hon'ble High Court of Karnataka has held that the rejection of the application on the ground of delay is correct. In the later, pronouncement of the Hon'ble High Court and the Hon'ble Supreme Court, it is held that delay is not a sole criteria to dismiss the application for amendment. Hence, this ruling is not applicable to the case on hand.

16. By way of amendment, the plaintiffs have sought for amendment of the description of the suit property. This suit is originally filed seeking the relief of Perpetual and Mandatory Injunctions. Now, the plaintiffs intend to insert the description of the suit property. The defendants

have stated that the proposed amendment would change the nature of the suit property. The plaintiffs have stated that the proposed amendment is necessary for resolving the disputes between the parties. Hence, the proposed amendment of description of the suit property is not changing the nature of the suit.

17. It is a settled principle of law that the amendments are to be allowed for resolving the dispute between the parties and to avoid multiplicity of the proceedings.

18. In **Varuna Pahwa Vs. Mrs. Renu Choudary**, ruling reported in **2019 SAR (Civil) 441**, the Hon'ble Supreme Court has held that *the amendment cannot be refused when there is mistake, negligence or inadvertence on the part of the counsel who drafted the pleadings*. In **Puttamaramma (Smt) Vs. Giryappa and Ors.**, ruling reported in **HCR 2016 Kar. 39**, the Hon'ble High Court of Karnataka has held that *even the appellate Court can entertain the amendment application*. In **Mahila Ramkali Devi & Ors. Vs. Nandram (D) Thr. Lrs. & Ors.**, ruling reported in **AIR 2015 Supreme Court 2270**, the Hon'ble Supreme Court has held that *the amendment necessary for the adjudication of the controversy between the parties should be allowed*. In **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. & Ors.**, ruling reported in **2018 (1) Civ.C.R. 368(SC)**, the Hon'ble Supreme Court has held that *the Court should be adopt liberal approach in allowing the amendment applications*.

19. It is cardinal principle that the Courts should be liberal in allowing the amendment application. It is a settled principle of law that mere

delay or even long delay is not sole reason for rejecting the application regarding the amendment. The delay can be compensation in terms of cost. Generally, in an amendment application U/O.VI Rule 17 of C.P.C., the Court has to examine whether there is withdrawal of any admission, whether proposed amendment would change of nature of the suit and whether proposed amendment is making the suit complicated. Apart from this, the Court has to examine the bonafide of the applicant. The amendment applications U/O.VI Rule 17 of C.P.C. are allowed, when the same is necessary for the purpose of determine the real questions and controversy between the parties.

20. In this application, the plaintiffs have sought for amendment of description of the suit property. Hence, it is just and essential to allow the amendment in the plaint in order to avoid the multiplicity of proceedings. Further, the proposed amendment will not change the nature of the suit altogether and there is no withdrawal of admissions by way of amendment. Whether the plaintiffs would prove their case or not is a matter of trial. Simply allowing the amendment application will not relieve the applicant to prove the facts stated in the proposed amendment. The defendants will get the opportunity to file the additional written statement. The burden is upon the plaintiffs to show their entitlement to the reliefs sought in the plaint.

21. The amendment application does not appear to be malafide. The delay in filing the application can be compensated by imposing cost. Hence, I answer Point No.1 in the Affirmative.

22. POINT NO.2 : From the foregoing discussion and reasons stated therein and in view of my findings to Point No.1, I proceed to pass the following :

ORDER

Interlocutory Application No.XX filed by the applicants/plaintiffs U/O.VI Rule 17 R/w. Sec.151 of C.P.C. against the defendants is hereby allowed by imposing cost of Rs.1,000/-.

The applicants/plaintiffs are permitted to amend the plaint as prayed in I.A.No.XX.

Since the matter is of the year 2009, both parties are directed to co-operate in the expeditious disposal of this suit.

(Dictated to the stenographer directly to the computer, typed by her, corrected by me & then, pronounced by me in the open Court on this the 13th day of February-2023.)

(Ganapati Bhat)
Prl. Civil Judge & J.M.F.C.,
Belagavi.