

Order Sheet
In the Court Of: III ADDL. CIVIL JUDGE AND JMFC BELAGAVI
AT BELGAUM
F.R.No:O.S./679/2014
Case Reg.No: O.S./682/2014

Plaintiff

V E R S U S

Defendent

1)Shri. Mahadev So Balu Patil

**1)Smt. Rekha Wo Santosh Patil &3
others**

2)Smt. Renuka Wo Shrikant Jadhav

3)Shri. Ashok So Maryappa Kadolkar

ORDERS ON I.A.8

Advocate for plaintiff filed an application Under Order 6 Rule 17 R/w Section 151 of C.P.C. seeking prayer to amend the plaint as per the schedule of amendment, accompanying with affidavit duly sworn by the plaintiff.

The plaintiff has averred in the affidavit that, during the pendency of the suit, the defendants have constructed the residential building in the suit property without having any sort of right, title and interest to cause loss to the plaintiff. It is further averred by the plaintiff that, only after filing of the written statement by the defendants, the plaintiff came to know that, subsequent development made by the defendants. Hence, prays to allow the said application as he does not change the nature of the

suit and further the said amendment is very important and material for the proper adjudication of the matter. Hence, prays to allow the application.

On the other hand, the defendant No.3 has filed the objections. The defendant has contended that, plaintiff has filed a false, frivolous, vexatious application and the same is not maintainable in law. Further the defendant deny all the allegations made in the affidavit. It is further contended by the defendant that, when the plaintiff is in possession of the suit property as alleged and sought relief of Permanent Injunction based on the possession and now the plaintiff cannot claim the relief of Mandatory Injunction by changing his version of possession. Therefore, the proposed amendment is not just and proper. Hence, the said amendment will change the nature of the suit. Hence, prays to dismiss the application filed by the plaintiff. It is further contended by the defendant No.1 that, on the basis of irrevocable General Power of Attorney has executed a registered Sale Deed with respect to the suit property in favour of the defendant No.2 for valuable sale consideration amount of Rupees 1,00,000/-. Subsequently the defendant No.2 in turn has executed registered Sale Deed dated 17/10/2011 half portion of the suit property in favour of the defendant No.3 for a valuable sale considerable amount of Rupees 2,14,500/-. The defendant No.3 has already made construction over his purchased portion of the suit property before filing the present suit and for which he has produced photographs with C.D. The plaintiff

has not produced any single document to show that, defendant has been trying to make construction over the suit property. Hence, prayed to reject the application with costs.

Heard and perused the material placed before me.

The plaintiff has filed the present suit for declaration and injunction to declare the registered Sale Deed dated 16/7/2008 executed by defendant No.1 in favour of defendant No.2 and subsequently executed Sale Deed by defendant No.2 in favour of defendant No.3 is not binding and consequential relief of Permanent Injunction. The defendant No.3 has taken up the contention that, the plaintiff was in acquiescence that, the defendant No.3 has constructed the building over the suit property before filing the present suit and to substantiate this the defendant No.3 has furnished the photographs and C.D. It is here pertinent to note that, the identity of the suit property and other facts has to be discovered and established after completing the evidence on both sides. The defendant No.3 further contended that, since the plaintiff has alleged that, he is in possession of the suit property seeking prayer for Permanent Injunction against the defendants. Now he cannot claim the relief of Mandatory Injunction by changing his version of possession. In order to ascertain the said facts, when looked into the deed of sale dated 16/2/2004 as alleged by the plaintiff. The erstwhile owners of the plaintiff through General Power of Attorney holder S.M. Maniyar has sold the suit property to the plaintiff

and handed over the possession to the plaintiff, has been mentioned in the said document. Hence, the version of the plaintiff whether he was in possession of the suit property and he had knowledge of construction being mde over the suit property or not has to be looked into at the time of trial. But at this stage, the contention of the plaintiff has to be relied on in order to protect the right and interest of the plaintiff over the suit property. Hence, at this stage the contention taken up by the defendant No.3 cannot be considered. It is further noted that, if the said application is allowed, it will not change the nature of the suit. Hence, it is just and necessary to allow the application filed by the plaintiff. If the said application is not allowed, the plaintiff will cause great hardship rather than the defendants. Hence, I am of the opinion that, the said application filed by the plaintiff at the initial stages before commencing of the evidence of the plaintiff side is very well just and necessary in the interest of justice and equity. Hence, I proceed to pass the following,

ORDER

I.A.8 filed by the plaintiff is hereby allowed.

To carryout amendment and to furnish amendment plaint
by 24/4/2017.

Sd/-

(Smt. LAKSHMI G.M.)
III Addl. Civil Judge & JMFC, Belagavi.