

KABG040028102023



17.02.2024

O.S.No.879/2023

ORDER ON I.A NO.III

Counsel for plaintiff filed an application U/O. VI Rule 17 R/w. Sec.151 of C.P.C. seeking for amendment of plaint as described in the schedule of amendment.

Schedule of Amendment

“7(A) It is submitted that the signature and thumb impression appearing in the alleged sale deed mentioned above is not that of the plaintiff and the defendants have affixed someone else signature and thumb impression on the said sale deed showing it falsely as made and affixed by the plaintiff. The plaintiff stoutly denies his signature and thumb impression on the said document and it’s execution by him. The said sale deed is a result of concoction and unlawful collusion by the defendants among themselves.”

2. In the affidavit annexed to the application, the applicant has stated that he has filed this suit for partition and separate possession against the defendants. At the time of filing this suit, he has not given certain instructions to his counsel and it is important specific contentions

which relates to this suit which was not pleaded in the plaint. It is further stated that recently he came to know that certain facts are required to be mentioned in the plaint which are left out which he has been advised by his counsel that the plaint filed by him initially needs to be amended so as to mention specific important averments in the plaint about the signature and thumb impression appearing in the alleged sale deed. Therefore, he seeks permission to amend his plaint as the defendants have affixed someone else signature and thumb impression on the said sale deed showing it falsely as made and affixed by him. He stoutly denies his signature and thumb impression on the said document and its execution by him. It is further stated that the proposed amendment is necessary to allow to effectively contest the suit against defendants and also same is necessary to decide the actual controversy involved in this suit. The proposed amendment does not in any way change the nature of this suit and in turn will enable this Court to effectively decide the dispute involved in this suit. Since he does not have any knowledge regarding the rules of pleadings, he could not take the contentions as proposed by him in the schedule annexed to this application at an earlier stage. Now, he has been advised by his counsel to amend his plaint and as such he filed this application. It is further stated that if this application is allowed no loss or hardship will be caused to other side and on the contrary, if this

application is not allowed, then he will be put to untold hardship. Hence, prayed to allow the application.

3. Even after providing opportunities, counsel for defendant Nos.3 and 4 failed to file their objections. Hence, the objections of defendant Nos.3 and 4 is taken as nil.

4. Heard the counsel for plaintiff.

5. Plaintiff has sought for proposed amendment to plaint. Under Order VI Rule 17 of C.P.C, Courts discretion to grant permission for a party to amend his pleading can be exercised, firstly, where no injustice is done to other side and secondly, the amendment being necessary for the purpose of determining the real question in controversy between the parties also keeping in view the proviso under Rule 17 of Order 6 of C.P.C. Even after commencement of the trial, the amendment can be permitted, if it is shown that in spite of due diligence, the applicant could not have raised the matter, earlier to the stage of commencement of the trial.

6. The present suit is filed for the relief of partition and separate possession against the defendants. The amendment sought by the plaintiff is to explain his case and he is not introducing any new case. If the proposed amendment is allowed, it will neither alter the nature of the suit nor change the subject matter of the suit. The burden

of establishing the facts as stated in the proposed amendment is upon the plaintiff. In order to avoid multiplicity of proceedings and for proper adjudication of the matter in controversy, the present application filed by the plaintiff deserves to be allowed. Hence, I proceed to pass the following:

ORDER

The application filed U/O.VI Rule 17 R/w. Sec.151 of C.P.C. by the plaintiff is hereby allowed.

Counsel for plaintiff is directed to carry out the amendment and to file amended plaint.

**Prl. Civil Judge & JMFC,
Belagavi.**

Call on 26.02.2024.

**Prl. Civil Judge & JMFC,
Belagavi.**