

KABG500000522022



**ORDER ON I.A.No.X FILED U/O VI RULE 17 R/W SEC 151
OF CPC.**

The plaintiffs have filed this present application U/o VI Rule 17 R/W Sec.151 CPC at I.A.No.X praying to permit them to amend the plaint as per the proposed amendment.

2. In the proposed amendment the plaintiffs prayed to permit them amend the date of cause of action by deleting 29.12.2012 in its place prayed to insert the 01.09.2020.

3. In the accompanying affidavit, the plaintiff No.2 contended that they have filed this suit for the relief of partition. Their father died on 01.09.2020 in that regard in the pleading as well as in the genealogy they have

mentioned the date of death of their father as 01.09.2020. In cause of action column the date of death of his father was wrongly shown as 29.12.2012. By way of this amendment they wanted to correct the date of death of their father in the cause of action column. The said mistake is typographical error and same may not come in deciding the merits of the case. They have noticed the said mistake when their counsel was preparing him for cross-examination. The mistake is a bonafide typographical mistake and the said amendment does not change the nature of the suit and it will not surprise the defendants. As such, they prayed to allow the application.

4. The defendant No.8 filed objections to this application by denying entire contents of the plaintiffs and further contended that the application is barred by time and as per the provisions of the Order 6 Rule 17 of CPC once the trial is commenced the application for amendment cannot be allowed as such, the application is to be dismissed. Further they

contended that the PW1 tendered his examination-in-chief on 20.09.2022 and thereafter the case is posted for cross-examination of PW1, several times the plaintiff took adjournments to keep present the PW1 for cross-examination. Now the case is posted for cross-examination of the PW1, if the application is allowed they will be put to heavy and irreparable loss. Further they contended that the amendment sought by the plaintiffs is cause of action it is settled law that no amendment can be allowed when the cause of action changes. In this case the allegation made in the plaint is that on 29.12.2012 the cause of the action was arose to the plaintiffs when the plaintiffs have noticed construction of the shed over the suit land on November 2019. Now the plaintiffs intended to insert the cause of action as 01.09.2020. This date and earlier date are different under these circumstances, when the cause of action changes the amendment cannot be allowed as such, the application is not maintainable. Hence, prayed to dismiss the same.

5. The objections filed by the defendant No.8 is adapted by the defendants No.3, 4, 4, 6, 7, 9 to 12, 14 to 18, 22, 224 and 25.

6. Further the defendants No.2 and 28 filed objections to this application by denying the contentions of the plaintiffs. Further they contended that the suit is instituted in the year 2022, plaintiff has led her evidence at this stage the proposed amendment change the nature of the suit hence, the application is not maintainable. Further the plaintiffs pleaded that the cause of action was arose to them on 29.12.2012, now they are going to change the date of cause of action, which completely change the nature of the suit hence, application is not maintainable. Hence, prayed to dismiss the application.

7. Heard both side. Perused the application and records.

8. The points that arise for my consideration are;

1. Whether the plaintiffs have made out grounds to permit them to amend the plaint as per proposed amendment?

2. What order?

9. My findings on the above points are:

POINT No.1: In the Affirmative

POINT No.2: As per final order

for the following;

REASONS

10. **POINT No.1:** The plaintiffs have filed this present suit seeking the relief of partition and separate possession of their share in the suit schedule properties. In the plaint and in the genealogy, the plaintiffs are stated that their father died on 01.09.2020 and by perusing the cause of action they stated that the cause of action arose to them when their father died but the date of the death of the plaintiffs father is mentioned as

29.12.2012 and further the plaintiffs are contended that the cause action also arose to them when plaintiffs noticed construction of shed over the suit property on November 2019. Now the plaintiffs are contending that the cause of action arose to them when their father died on 01.09.2020 and they noticed construction shed over the suit property in the month of the November 2019. In the cause of action column the plaintiffs mentioned the date of death of their father as 29.12.2012 but as per plaint averments and genealogy the date of death of the plaintiffs father is 01.09.2020.

11. It is settled principles of law that when the date of cause of action changes the amendment cannot be allowed. In this present case on hand, the plaintiffs specifically pleaded that the cause of action arose to them when their father died on 01.09.2020, but in the cause of action column the date of death of the plaintiffs father is mentioned as 29.12.2012, it appears that due to typographical error the date of death of

the plaintiffs father is wrongly mentioned as 19.12.2012 instead of 01.09.2020. The defendants are specifically contended that by way of amendment if the date of cause of action is changed the amendment cannot be allowed. No doubt, it is settled principles of law that by way of amendment if it changes the nature of the suit and cause of action changes the amendment cannot be allowed.

12. In this present case on hand, the plaintiffs are specifically pleaded that after the death of their father cause of action was arose to them and they have mentioned the date of death of their father was 01.09.2020. By perusing the entire plaint averments it is clear that the plaintiffs are pleaded that when their father died on 01.09.2020 cause of action arose to them to file the suit but in the cause of action column the date of the death of their father is wrongly mentioned as 29.12.2012. The plaintiffs are already pleaded in the plaint averments when the cause of action arose to them but in the

cause of action column the date of cause of action is wrongly mentioned as 29.12.2012 instead of 01.09.2020. If the plaintiffs are permitted to amend the plaint as per the proposed amendment it will not cause any loss or injury to the defendants and so also the cause of action was arose to the plaintiffs does not change. No doubt, the plaintiffs are filed this application when the matter is posted for cross-examination. It appears that the plaintiffs are not diligent in conducting their case, if by imposing cost on the plaintiffs and they are permitted to amend the plaint it will meet the ends of justice. Hence, I answered the **Point No.1 in the Affirmative.**

13. **POINT No.2:** For the aforesaid findings, I proceed to pass the following:

ORDER

The application filed by the plaintiffs
U/o VI Rule 17, R/W Sec.151 of CPC at
I.A.No.X is hereby allowed on cost of
Rs.500/-.

Plaintiffs are directed to carryout
necessary amendment to the plaint and
furnish the amended plaint on or before
next date of hearing.

Call on for furnishing the amendment
plaint by 16/10/2024.

Sd/-

Prl. Sr.C.J.Gokak.