

Presented on : 04-01-2013
Registered on : 05-01-2013
Decided on : --
Duration :

**IN THE COURT OF PRL. CIVIL JUDGE & JMFC
AT BELGAUM
(PRESENTED OVER BY SRI.R.P.GOUDA)**

O.S./0000045/2013

APPELLANTS :

1. Shri. Gurushiddappa S/o. Kallappa Kumbar
R/o. H.No. 183 Kumbar Oni, Badas Tal and Dist Belgaum.

VERSUS

RESPONDENTS :

1. Shri. Siddappa Shivappa Ganagi
R/o. Ganiger Oni, Badas tal and Dist Belgaum.
2. Shri. Adivappa S/o. Channappa Ganagi
R/o. Ganiger Oni, Badas Tal and Dist Belgaum.
3. Smt. Shamala @ Sushila W/o. Shekappa Doddakallanavar
R/o. Ganiger Oni, Badas Tal and Dist Belgaum.

Shri. G.D.Mutalik, Advocate for the appellant.

: Orders on I.A. No. 10 :

This is an application filed by the learned counsel for the plaintiff seeking amendment of the plaint as per proposed amendment sought in the application.

2. The application is supported with the affidavit of the plaintiff. In his affidavit, he has stated that the present suit has been filed by the plaintiff for declaration

and possession. It is stated that defendants have appeared and filed their detailed written statement. It is further stated that in the first week of November, 2013 the defendants during the pendency of the present suit have started construction of a toilet room abutting to the another house of the plaintiff situated in GP No.176 in Tikana No. 3 as shown in the hand sketch annexed to the plaint. It is stated that defendants have already dug the pit for toilet room and also fixed the underground cement pipe. At that time, on 6/11/2013 the plaintiff has filed an application U/o.39 R. 1 and 2 of C.P.C. against the defendants for restraining them from construction of the said toilet room. It is stated that defendants have received the copy of the said application through their counsel and by obtaining time to file objections, they have completed their entire construction work of the said toilet. It is stated that due to the said toilet room, now it has become very difficult for the plaintiff to reside in the abutting house. It is further stated that the defendants have deliberately constructing the said toilet room only with an intention to harass the plaintiff and compelling him to withdraw the suit. It is further stated that this act of the defendant has been done during the pendency of the present suit. It is further stated that the plaintiff has also lodged a police complaint but, police have not taken any action. In view of this, the plaintiff is intending to amend the plaint by bringing subsequent events and also seeking mandatory injunction against the defendants.

3. Per contra, the learned counsel for the defendants has filed his statement of objections and denied the application of the plaintiff as misconceived and the same is untenable in the eyes of law. It is further stated that the contents of the affidavit are specifically denied by the defendants and it is further stated that with a sole intention to harass the defendants, the plaintiff has filed the present suit on unfounded allegations. It is also stated that the plaintiff is no way concerned to the suit property of the defendant. It is further stated that these defendants have held and possessed the said property as per registered sale deed. It is further stated that defendants have constructed the toilet in their area covered under their sale deed, but, the plaintiff suppressed all the material facts has filed the present application, which is not maintainable in the eyes of law. It is further stated that amendment which is sought by the plaintiff will change the nature of the relief claimed and nature of the suit. It is further stated that the proposed amendment is just to delay the proceedings and hence, the conduct of the plaintiff is tainted with malafide intention to make wrongful gain over the property of the defendants, who being a lawful owners as per the registered sale deed. By stating all these grounds, it is prayed for dismissal of the application with costs.

4. Heard the arguments on plaintiff side. Despite giving several opportunities, the defendants have not addressed any arguments. Hence, the arguments on defendant side is taken as nil.

5. The following points that would arise for my consideration are;

1) Whether the plaintiff has made out grounds to allow the proposed

amendment and permit the plaintiff to amend the plaint as prayed in the I.A.?

2) What order?

6. My answer to the above points are as under:

Point No.1 : In the Affirmative

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

: REASONS :

7. Point No.1:- It is to be noted that now, the case is posted for evidence on plaintiff side on preliminary issues. At this stage, the plaintiff has come up with the present application. It is true that, previously, this plaintiff has filed an application U/o.39 R. 1 and 2 of C.P.C. and case was posted for objections to be filed by the defendants. Despite giving several opportunities, the defendants have not opted to file any objections. In the mean time, the plaintiff has filed a memo stating that he is not pressing the application U/o.39 R. 1 and 2 of C.P.C. and hence, prayed for dismissal of the application as not pressed. Thereafter, the present application has been filed.

8. It is true that, at the time when the plaintiff has filed suit, he has also filed an application U/o.39 R. 1 and 2 of C.P.C. and thereafter also, he has filed another similar application, which was subsequently not pressed by the plaintiff and thereafter has come up with the present application. It is important thing to note that by way of amendment, the plaintiff has alleged that defendants have constructed a toilet room just abutting to the suit property as shown in the hand sketch and as such the application U/o.39 R. 1 and 2 is not pressed by the plaintiff. It is alleged by the plaintiff that construction made by the defendants is highly illegal and as such, he is seeking the relief of mandatory injunction against the defendants. It is further contended that the said things are the subsequent events which are happened after filing the suit and as such, the plaintiff is intending to bring the same to the notice of this court regarding act of the defendant. It is important thing to note that the learned counsel for the plaintiff has relied upon the I.A. No.1 which was filed by him and has contended that even after passing temporary injunction, the defendants have succeeded to put up a construction which is said to be a toilet which is just abutting to the suit property. Under these circumstances, the plaintiff has been constrained to file the present application.

9. It is true that, the defendants have taken a specific contention in their written statement that they are the owners and holders of the suit property and they have denied right and title of the plaintiff over the suit property. It is to be noted that the present suit has been previously filed by the plaintiff seeking relief of declaration and Permanent Injunction against the defendants in respect of the suit property. But, at the

same time it is to be noted that the contention of the plaintiff that subsequent events were happened and these defendants have put up a toilet room which is just abutting to the suit property which is causes inconvenience to the plaintiff. Under these circumstances, I am of the opinion that the present suit being a suit for declaration and Permanent Injunction sought by the plaintiff, there is a need to bring subsequent events in the suit so as to enable the plaintiffs to continue in the suit by bringing said subsequent events on record and thereby he can seek further relief in the same suit. Under these circumstances, I am of the opinion that the contention of the plaintiff is found sustainable.

10. It is true that now the case is posted for evidence on preliminary issues. At this juncture, the present application has been filed. I am of the opinion that even though, the application has been filed at highly belated stage, the said delay has been caused due to the alleged act of the defendants where these defendants have alleged to be put up toilet room, which is just abutting to the suit property during the pendency of the suit. Under these circumstances, if the proposed amendment is added in the present suit and relief of mandatory injunction has been sought by the plaintiff, there will be determination of entire disputes between the parties and same will enable this court to adjudicate the case on hand effectively and judiciously by trying the same as a comprehensive suit. Under these facts and circumstances, the contention of the plaintiff is found sustainable and hence, the I.A. is deserves to be allowed. Accordingly, I answer this point in the Affirmative.

11. Point No.2:- In view of my discussion on the above point, the application filed by the plaintiff is deserves to be allowed. I find no grounds to grant cost in the application by considering the facts and circumstances of the present suit. Hence, I proceed to pass the following:-

: ORDER:

The I.A. No. 10 filed by the plaintiff U/o. 6 R. 17 R/w. Sec. 151 of C.P.C. is hereby allowed.

No order as to costs.

The plaintiff is permitted to amend the plaint as per proposed amendment and also permitted to file amended plaint and fresh valuation slip in respect of the relief sought in the present suit.

Call on for amendment of the plaint by 17/1/2015.

Sd/-

Prl.Civil Judge & JMFC,
Belgaum.