

ORDER ON I.A No.IV

Advocate for plaintiff filed this application U/o. U/o.VI Rule 17 R/w sec.151 of CPC seeking amendment of the plaint. This application is filed on 13.06.2024 when the matter was posted for issues. Advocate for defendant No.1 has filed objection on 19.06.2024.

2. In the accompanying affidavit to this application, the plaintiff submitted that he has filed the suit for partition and separate possession. At the time of filing of this suit through oversight or by typographical mistake the name of defendant No.2 was wrongly typed as Shivarai instead of Suresh and in genealogy also the name of defendant No.2 was wrongly shown as Shivarai instead of Suresh and the name of defendant No.3 was wrongly shown as Shilpa instead of Shobha. The said error has been recently noticed. The proposed amendment is:

In the cause title the name of defendant No.2 is mentioned as Shivarai, the same may kindly be deleted and in its place Suresh may kindly be inserted by way of amendment.

Further in plaint Page No.2, para No.2 in Genealogy the name of defendant No.2 is shown as Shivarai, the same may kindly be deleted and in its place Suresh may kindly be inserted. So also the name of defendant No.3 was wrongly shown as Shilpa, the same may kindly be deleted and in its place Shobha may kindly be inserted, by way of amendment.

The plaintiff further submitted that, the amendment in this regard is necessary. Further submitted that the nature of the suit will not be changed and no loss

or hardship caused to other side. Hence, prayed to allow this application.

3. On the other hand the advocate for defendant No.1 has filed objection on behalf of defendant No.1. In the said objection the contents of the application are denied and contended that no documents were produced to show that name of defendant No.2 is Suresh and not Shivarayi. In the cause title of the plaint name of defendant No.3 shown as Shobha and thereby the amendment application is not maintainable. Hence, prayed to dismiss the application.

4. Heard and perused materials available on record.

5. The points that arise for my consideration are as follows.

Point No.1:- Whether plaintiff has made
grounds to allow this application?

Point No.2:- What order?

6. My findings to the above points are as under,

Point No.1: In the Affirmative

Point No.2 : As per order.

REASONS

7. Point No.1:- The plaintiff has filed suit for Partition and Separate Possession. The plaintiff

averred that at the time of filing through oversight through oversight or by typographical mistake the name of defendant No.2 was wrongly typed as Shivarai instead of Suresh and in genealogy also the name of defendant No.2 was wrongly shown as Shivarai instead of Suresh and the name of defendant No.3 was wrongly shown as Shilpa instead of Shobha and accordingly the plaintiff intends to carry out the amendment as per the proposed amendment stated above. On the other hand, advocate for defendant No.1 has filed objection and denied the contents of the application and hence prayed to reject the application. The defendant No.3 and 4 have not filed any objection. The defendant No.4 in her written statement at Para No.4 has taken the contention that, names of the defendants No.2 and 3 are wrongly mentioned as Shivarai and Shilpa instead of Suresh and Shobha. I have perused available materials on record, where it appears that the proposed amendment is necessary to be carried out in order to correct identification of the defendants No.2 and 3. The proposed amendment will not change the nature of the suit and if the application is allowed, the other side will not be put to any hardship. Therefore if this IA is allowed no prejudice would be caused to other side. Hence, this Court answers point No.1 in the affirmative.

8. Point No.2:- For the foregoing reasons, this Court proceeds to pass the following:-

::ORDER::

IA No.IV filed by the plaintiff U/o. VI Rule 17 R/W sec.151 of CPC is hereby allowed.

The plaintiff is permitted to amend the plaint accordingly as prayed for.

For amendment and amended plaint by 27.09.2024.

13-09-2024

**Sd/-
II Addl. C.J & JMFC.,
Gokak.**