

ORDER ON I.A. NO.IX

1. The instant application has been filed by the applicants/plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, seeking to permit them to carry out the amendment in the plaint as mentioned in the interim application.
2. The learned Counsel for the defendant no.4 to 8 has filed the objections to the said application. In spite of giving sufficient time, the defendant no.9 to 16 have not filed their objections to I.A.No.9. Hence, the objections to the said application are taken as not filed which is evident in the order sheet dated 20/01/2024.
3. I have heard the learned Counsel for the plaintiffs and the learned Counsel for the defendant no.4 to 8. In spite of giving sufficient time, the learned Counsel for the defendant no.9 to 16 has not argued on I.A.No.9. Hence, the arguments on I.A.No.9 is taken as not addressed which is evident in the order sheet dated 26/02/2024.
4. On perusal of the records of the case, the following points would emerge for my consideration:
 1. Whether the proposed amendment is necessary for the just adjudication of the case?
 2. To what order?
5. My findings on the above points are as under:
 1. In the Affirmative,
 2. As per final order for the following:

REASONS

6. **Point No.1:** In an affidavit appended to the application, it is stated by the applicant/plaintiff no.1 that she has filed the suit for partition and separate possession as well as declaration in respect of suit schedule properties and in previous days and adjournments of the said case she was unable to get attend before the Court regularly and unable to get certified copies of NA map of the suit schedule item no.1 and 2 respectively and she has further stated that the defendants are trying to alienate the suit properties. Further, she has stated that through oversight and typical irregularities, she has mentioned total plots in the suit properties as each property having 128 plots i.e., total 256 plots and calculated the market value on total 256 plots and thereafter, when she gets the certified copy of NA map pertaining to suit properties it shows the real and actual plots situated in the suit property and there are 111 residential plots are created and to avoid further complications she has sought for the amendment and if this application is allowed no harm will be caused to the defendants and the it does not create new cause of action and nature of the suit will not be changed and accordingly, among other grounds she prays to allow the application.
7. The learned counsel for the defendant no.4 to 8 has denied the application averments in material aspects and contended that the application filed by plaintiff no.1 is not maintainable either under law or on facts and the same is liable to be dismissed. He has further contended that the amendment sought by the plaintiff no.1 is incomplete and she has given wrong information before the Court and accordingly, among other grounds prays to reject the application.
8. In view of the rival contentions put forth by the parties, now, let me see as to whether the proposed amendment is necessary

for the just adjudication of the case. In so far as the amendment of pleading is concerned, it is a settled position of law that, no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In view of the aforesaid legal position, now let me see as to whether the applicant has made out sufficient grounds to allow the application. It is pertinent to note that in the case on hand, the trial has not commenced and now it is posted for plaintiff evidence and at this time the plaintiff no.1 has filed this application. Further, it is pertinent to note that the plaintiff no.1 has brought the true facts before the Court and produced the documents in this behalf and it has thrown some light upon the facts of the case pertains to actual plots available in the suit schedule properties and moreover if this application is not allowed, the plaintiffs will be put to great loss and which cannot be compensated in terms of money and on the other hand, the defendants will not be put to any hardship and moreover, the amendment will not change the nature of the suit and it does not create any new cause of action. Moreover, the amendment as sought by the applicant is very much necessary for the just adjudication of the case and it is also a settled position of law that courts should adopt liberal approach in the case of amendment of pleadings.

9. Having regard to the entire materials available on record I am of the opinion that, the proposed amendment is very much necessary for the just adjudication of the case and it does not alter the basic structure of the plaint. Moreover, no loss, injury or prejudice would cause to the opponents, if the applicant is permitted to amend the plaint. Accordingly, I answer this point No.1 in the Affirmative.

10. **Point No.2**: In the result, I proceed to pass the following:

ORDER

I.A. No.IX filed by the applicant/plaintiff no.1 under Order VI Rule 17 of C.P.C. is hereby allowed.

Consequently, the applicant/plaintiff no.1 is permitted to amend the plaint on or before the next date of hearing and shall furnish the amended plaint to the opponents.

For amendment and furnishing amended plaint.

Call on :

(Directly I have typed on my laptop, corrected and then pronounced by me in the open Court on this the 10th day of June 2024.)

(Hanamantarao R.Kulkarni)
Senior Civil Judge and J.M.F.C.,
Hunagund.

Order on I.A.No.X

In view of I.A.No.9 is allowed, I.A.No.10 is also allowed and the plaintiffs are permitted to produce the documents.

SCJ & JMFC, Hunagund.