

19.08.2023

ORDERS ON I.A.No.21

The legal heirs of original plaintiff have filed the I.A.No.21 under Order 6 Rule 17 R/w. Sec.151 of C.P.C. by seeking amendment of the plaint to include some corrections in Paragraph No.2 and 6 of the plaint and also in the description of the Eastern Boundary of the suit schedule property by way of amendment. Briefly stated, the applicants have sought for insertion of the name **Gobbargunate** instead of **Avathi** and **land of Nanjundappanavara Anjinappa** instead of **Chikkannanavar Nanjundappa** and for including the name **Narayanaswamy** as the father of the second defendant in the cause title by way of amendment.

2. In support of the I.A.No.21, the plaintiff No.1(b) Sri. Nagaraj has filed his affidavit by deposing on oath for himself and also on behalf of other plaintiffs. In brief, he has deposed to in his affidavit that, the deceased father of the plaintiffs has filed the suit for the relief of Declaration and Permanent Injunction and after his death, the present applicants came on the record. During preparation of the plaint, the name of the Village was wrongly mentioned as Avathi instead of Gobbaragunte and the Eastern Boundary

of the suit schedule property was also wrongly described due to typographical errors. The said mistakes are unintentional and they came to the notice of the applicants only after they came on record and therefore, the allowing of the amendment of the plaint is necessary. The I.A.No.21 will not prejudice the defendants in anyway and it will not introduce any new cause of action for the plaintiffs and therefore, the same is liable to be allowed.

3. The defendants have filed their objections to the I.A.No.21. In brief, they have submitted that, the suit was filed in the year 2007 and the I.A.No.21 was filed in the year 2022. Therefore, there is a lapse of 15 years in filing the application for amendment. As per the Judgments of the Hon'ble Apex Court, once the issues are framed and trial was commenced, then there is no scope for allowing the amendment. Therefore, the defendants have prayed for dismissal of the I.A.No.21.

4. Both side counsels have addressed oral arguments and the plaintiffs counsel has relied on the Judgments reported in **1. (2002) 7 SCC 559** in between **Sampath Kumar V/s. Ayyakannu** and **2. 2023 SC 223** in between **Ganesh Prasad V/s. Rajeshwara Prasad.**

5. On appreciation of the facts leading up to filing of the I.A.No.21, the following Points are arisen for my consideration:

POINTS

1. Whether the legal heirs of plaintiff show that, in spite of their due diligence, they could not have raised the proposed amendment before commencement of the trial?

2. What Order?

6. Now, my answers to the above points are as follows:

Point No.1 : In the Affirmative

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

R E A S O N S

7. **Point No.1:-** I have already narrated the facts and circumstances surrounding the I.A.No.21 and therefore, it is needless to reiterate the same again and again.

8. It is not disputed that, the above application is filed after 15 years from the date of filing of the suit as contended by the defendants in their objections. But, it is

noticed that, it is not the original plaintiff and it is only his legal representatives who are seeking amendment of plaint for correction of names of the Village and Persons in description of the pleadings and parties. The counsel for the plaintiffs has drawn my attention to the suggestions of the defendants counsel in the cross-examination of the PW.1 about the actual description of the Eastern Boundary of the property and he has placed reliance on the Judgment of the Hon'ble Apex Court in the case of **Sampath Kumar V/s. Ayyakannu** wherein, the Hon'ble Apex Court has held that, *the delay of 11 years in filing application for amendment of pleadings will not be a ground for refusing the amendment.*

9. Even otherwise, the legal heirs of the plaintiff are seeking only correction of some typographical errors and those corrections will not alter the structure of the suit and they will not introduce any new cause of action in the suit and the Provisions of Order 6 Rule 17 of C.P.C. provides that, such amendments were to be allowed subject to payment of costs for the reason of not raising them before settlement of issues. Therefore, I am of the considered opinion that, the applicants are entitled for amendment of plaint and they have shown due diligence and hence, I answer the **Point No.1 in the Affirmative.**

10. **Point No.2:-** For the above discussion, I proceed to pass the following:

ORDER

The I.A.No.21 filed by the legal heirs of plaintiff under Order 6 Rule 17 of C.P.C. is hereby allowed.

The legal heirs of plaintiff are directed to amend the plaint by incorporating the proposed amendment in the plaint and furnish amended plaint on the next date of hearing.

(Dictated to the typist directly on computer and corrected and then pronounced by me in the open Court on 19th August 2023).

**Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.**