

O.S.No.131/2007

14.07.2023

Order on I.A. No.XIV Filed U/o.VI Rule 17 R/w.Sec.151 of
C.P.C.

The instant application has been filed by the counsel for the plaintiff seeking amendment of plaint.

2. In the affidavit the plaintiff No.2 has stated that he has filed the present suit for the relief of partition and consequential reliefs in respect of suit schedule properties. The deceased defendant No.1 forged the signature of his father and executed sale deed in respect of item No.2 property. The said sale deed was executed on 10.05.1982. Item No.2 property is a ancestral property and the plaintiffs have got share in same. Recently he has verify the file and found that he has not pleaded certain important facts and also not produced some documents. He is seeking amendment in this regard. The application is very much necessary and no hardship will be caused to other side if the same is allowed. Hence prayed to allow the application.

3. The defendants No.4 filed objection by stating that, the application is not maintainable under law. It is further

stated that similar application was filed by the plaintiff and the same was allowed and after such amendment the present application again came to be filed. The application has been filed with dishonest intention to harass the defendant. Nothing precluded the plaintiffs from seeking amendment at the earlier stage. No application for amendment shall be allowed after commencement of trial, unless the court comes to conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial. The application is liable to be rejected. Hence prayed to reject the application with cost.

4. Heard both sides.

5. **The following points would arise for my consideration:**

1. Whether the plaintiff No.2 has made out grounds for amendment of plaint ?
2. What order?

6. **My answer to the above points are as follows:**

Point No.1 : **In the Affirmative**

Point No.2 : **As per final Order
for the following :**

R E A S O N S

7. **Point No.1:** The plaintiff has sought for amendment of plaintiff to insert certain facts in the plaint by way of amendment. It is stated in the affidavit that the plaintiff has recently verified the file and came to know that certain important facts are not pleaded in the plaint and hence the amendment is necessary. The learned counsel for the plaintiffs has argued that the plaintiff has recently changed the counsel and earlier counsel failed to plead certain facts regarding the suit schedule properties. It is further argued that in a suit for partition it is very much necessary to plead regarding the history of the property to prove that those properties are ancestral properties.

8. On the other hand the defendant No.4 has objected the application on the ground that a similar application for amendment of plaint was already filed and the plaintiff ought have pleaded the proposed amendment in the said application. It is further contended that the application is not maintainable under law.

9. In view of the rival contentions, on going through the provision of law it is clear that an amendment of pleadings after commencement of trial has to be allowed only if court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. It is settled position of law that an application for amendment can be

filed at any stage of the suit. It is also settled position of law that amendment should be liberally allowed when it does not change the nature of the suit or the cause of action. On going through the proposed amendment. It is clear that the plaintiff intends to narrate certain facts regarding the suit schedule properties. The proposed amendment is very much necessary to determine the question in controversy. The amendment is not going to change the nature of the suit and it will not take away the original cause of action to file the suit.

10. Though the defendant No.4 has contended that the application is not maintainable there is no such reason made out in the objection to reject the application. It is also settled position of law that any number of applications for amendment of plaint can be filed by either party. The plaintiff has specifically stated in the affidavit that recently he came to know about non pleading of certain important facts in the plaint. There is no ground to disbelieve the plaintiff in this regard. The proposed amendment is not going to cause injustice to the other side. Moreover, the defendant No.4 has the opportunity to file additional written statement to the amended plaint and to deny the facts pleaded by way of amendment. Hence, the plaintiff No.2 has made out grounds for amendment of plaint. Accordingly, I answer **Point No.1 in the Affirmative.**

11. **Point No.2** : In view of the above findings on Point No.1 this court proceeds to pass the following:

ORDER

IA No.XIV filed under U/o 6
Rule 17 R/w.Sec.151 of C.P.C is
hereby allowed.

For amendment and amended
plaint by

R/By: 06.09.2023.

**Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**