

ORDER ON I.A.II

This order arising out of I.A filed by plaintiff under order 6 rule 17 R/w Sec.151 of C.P.C. requesting the Court to grant permission to amend his plaint.

2. In support of application plaintiff has duly sworn affidavit and stated that, plaintiff has filed the present suit for permanent injunction in respect of suit schedule property against the defendant, now plaintiff sought in the proposed amendment, it is just and necessary adjudicate the

matter in proper manner if this application is allowed no hardship cause to the defendant, if this application declined by this Court the great hardship will be caused to the plaintiff. Hence, prays to allow the application. Hence prays to allow the application.

3. On the other hand, the defendants has resist application filed by the plaintiff by filing written objection and stating that, application filed by plaintiff is not maintainable either law or on fact, If it is permitted to amend the plaint it would be changed nature of suit and also cause of action, therefore amendment is not permitted. Hence prays to dismiss the application.

4. Heard on plaintiff side.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1) Whether there is sufficient grounds to allow the application?

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 for the

following:

REASONS

7. POINT No. 1: The plaintiffs have filed this suit against the defendants seeking relief of permanent injunction . After filing of the suit, the defendant has appeared through his counsel and filed written statement, now plaintiff has filed the present application and seeking permission to permit him to amend the plaint .

08. Order 6 Rule 17 of C.P.C. empowers the Court to grant permission to any party to amend his pleadings, which are necessary for final and effective adjudication of real controversy between the parties. The proviso to Rule 17 of Order 6 C.P.C. provides that Court can allow any amendment to the pleadings after the commencement of trial only if the said application could not have raised such pleadings before commencement of the trial with due diligence. In this regard Hon'ble apex court as summarized above said legal position in the case of **LIC V/s**

Sanjeev builders Pvt. Ltd., reported in **2022 on line SC 1128** as under:

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is

ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in

controversy between the parties, the amendment should be allowed.

In view of the above said legal position Order 6 Rule 17 is permitted all the amendments that are necessary for final and effective adjudication of the real matter in controversy. The proposed amendment of plaint is necessary for final and effective adjudication, if this application is not allowed the effective adjudication in the suit cannot be rendered. Further, if amendment is permitted, the defendants having right to resist such new amendment by filing additional written statement, as well as test the veracity of new amendment by way of cross examination of plaintiffs and his witnesses, further it is bounded duty of the plaintiff to prove new amendment by producing cogent and consistent evidence, if the plaintiff is failed to prove the new amendment by producing cogent and consistent evidence mere pleading is not sufficient to believe the case of plaintiff until it is to be proved by producing evidence, therefore there is no harm will cause to defendants if these amendment is permitted, if this amendment is not permitted Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated. Therefore proposed amendment is permissible. Hence, I.A. is deserves to be allowed. **Hence I answer point No.1 in the affirmative.**

09. Point No.2: In view of the above discussion, this court proceeds to pass the following:

ORDER

I.A. No.II filed by plaintiff Under Order 6 Rule 17 R/w Sec. 151 of C.P.C., and is hereby allowed with cost of Rs.300/-.

Plaintiff is permitted to amend the plaint as per I.A. No.II and furnish amendment plaint.

For amendment by

Prl. Civil Judge and JMFC.,
Devanahal