

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,

AT DODDABALLAPUR.

Dated this the 17th day of September, 2019

PRESENT: Sri.M.B.KULKARNI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

O.S.No.267/2019

Plaintiff: 1. Sri.V.Anjanegowda S/o. Sri.Venkatashamanna,
A/a. 42 years, R/at. Chikkanahalli Village,
Doddabelavangala Hobli, Doddaballapur Taluk,
Bengaluru Rural District -561203.

(Represented by Advocate
Sri.Asadullakhan.)

V/s.

Defendants:- 1. Sri.Ravikumar.G.T. S/o. Late V.Timmaiah,
A/a. 37 years,
R/at. No.3919, Gangadharapura,
Doddaballapur Town and Taluk,
Bangalore Rural District-561203.

2. Sri.Rangaswamy S/o. Late Rangappa,
A/a. 45 years, R/at. Bayalahalli Village,
Bangalore North Taluk.

(Represented by Advocate
Sri.M.V.Vijayakumar for D2 & D1 in person .)

* * * * *

Order on I.A.No.V

This is the application filed by the plaintiff under order 6
Rule 17 R/w. Section 151 of CPC and Section 94 of CPC for
amendment of plaint to replace at Paragraph No.7 in Page No.4

the word schedule "C" as schedule "F" – Item No.7 and also to replace at Paragraph No.10 in Page No.5 the date 30-03-2019 as 10-06-2019 as prayed for.

2. In the accompanying affidavit of I.A.No.V it is averred by the plaintiff that, she has filed this suit for relief of declaration and injunction against defendants. While filing the suit by typographical mistake wrong date is mentioned in Para No.10 of plaint in Page No.5 as 30-03-2019 but correct date is 10-06-2019 and similarly while submitting the plaint by typographical mistake in Page No.7 of the plaint in Page No.4 the word "schedule "C" requires to be replaced as schedule "F" and Item No.7. The proposed amendment is not with malafide intention but for bonafide reason of typing mistake and if such amendment is allowed no loss or hardship would be caused to other side, but if such amendment is not allowed much loss and hardship would be caused to plaintiff. It is further averred that the proposed amendment will not change the nature of the suit or cause of action. Hence, prayed to allow I.A.No.V.
3. The defendant No.2 has filed objections to I.A.No.V contending that the averments of I.A.No.V are all false and such is not maintainable either in law or on facts. It is further contended that the such application is filed at the belated stage to drag on the matter and to harass the defendant No.2. It is further contended that, if such application is allowed much loss and hardship would be caused to defendant No.2. Hence, prayed to dismiss I.A.No.V.

4. Heard both sides on I.A.No.V. Perused the material placed on record.
5. In the light of the above, following points arise for my consideration.

Point No.1: Whether I.A.No.V filed by the plaintiff under order 6 Rule 17 R/w Section 151 of CPC for amendment of plaint deserves to be allowed?

Point No.2: What order?

6. My findings to the above points is as under.

Point No.1: In the Affirmative.

Point No.2: As per final order.

REASONS

7. **Point No.1:** It is not disputed by the both parties to the suit that this is the suit for declaration of title of plaintiffs over suit property and for injunction and also for declaration that the sale deed dated 30-04-2009 and one more sale deed of the year 2014 are null and void and not binding on them. The plaintiff by filing I.A.No.V sought amendment of plaint only to replace schedule "C" as schedule "F" in Item No.7 in Para No.7 at Para No.4 of plaint and to replace in Para No.10 at page No.5 the date 30-03-2019 as in correct date and to replace it by correct dated 10-06-2019. Whether the cause of action arose on 30-03-2019 or 10-06-2019, the burden of proof is on the plaintiffs to prove the same in the full pledged trial, without which the plaintiff cannot succeed in getting decree and moreover there is gap of only 70 days in between the two dates i.e.,

(two months ten days) and there is no much gap of years together. Similarly in Para No.7 of plaint at page No.4 the plaintiff has mentioned that "C" schedule property was allotted to defendant No.1 by partition deed, but as per the plaintiff the correct schedule is "F" schedule properly allotted to defendant No.1 which plaintiff wants to insert by way of amendment. Whether the "C" schedule property has fallen to the share of defendant No.1 in partition or "F" schedule property, the burden of its proof is on the plaintiff to prove the same and the partition deed itself speaks about the truth of the matter and it cannot be manipulated. Therefore, if at all really the "F" schedule property has fallen to the share of defendant No.1 it is necessary to permit the plaintiff to amend the plaint to replace the correct schedule of partition deed to prove his case and the defendant No.2 can disprove the case of plaintiff in the full pledged trial on the basis of his available evidence. Therefore, in order to adjudicate the rights and liabilities of the parties to the suit it is necessary to permit the plaintiff to amend the plaint as prayed for.

8. Therefore, it is necessary to allow I.A.No.V. Hence, I.A.No.V deserves to be allowed with reasonable cost. Hence, I answered point No.1 in the affirmative.

9. **Point No.2:** On the basis of my above reasons and in the result I proceed to following;

ORDER

The I.A.No.V filed by the plaintiff is
hereby allowed subject to cost of
Rs.300/- for having caused delay in

filing such application and the plaintiff is permitted to amend the plaint to carry out amendment of plaint as per the proposed amendment shown in I.A.No.V and to furnish the amended plaint.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 17th day of September 2019.)

(M.B.KULKARNI)

Senior Civil Judge,
Doddaballapur.