

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
JMFC AT DODDABALLAPURA

PRESENT : Sri. Sandeep .A. Naik, B.A.,LL.B.(Spl.),
Prl. Civil Judge & JMFC, Doddaballapura
Bengaluru Rural District

Dated this the 10th Day of June 2020

O.S.No. 521 / 2014

PLAINTIFF : Smt. Channamma
D/o. Late Channappa
W/o. Gangahanumaiah
Aged about 60 years
R/at. Shakaladevanapura
Madhure Hobli
Doddaballapura Taluk

(By Sri. B.S.K., Advocate)

-Vs-

DEFENDANT : Sri. Channegowda
S/o. Late Channarayappa
Aged about 40 years
R/at. Doddatumkur Village
Madhure Hobli
Doddaballapura Taluk

(By Sri. B.K.G.R., Advocate)

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PARTIES TO I.A. filed U/O.6 Rule 17 of C.P.C.

APPLICANT/ : Channamma
PLAINTIFF

V/S

OPPONENT/ : Channegowda
DEFENDANT

Order on I.A. filed by plaintiff U/O.VI Rule 17
R/w.Section 151 of C.P.C.

The plaintiff has filed this application under Order 6 Rule 17 R/w.Section 151 of C.P.C. seeking permission to amend the prayer by inserting the following amendment sought for. The proposed amendment is as under:

“ Prayer column: After Prayer a. insert a.a.
a.a) declare that the plaintiff is in possession and enjoyment of the suit ‘A’ and ‘B’ schedule properties. ”

2. The plaintiff sworn to the affidavit and stated that she has filed this suit for the relief of declaration and permanent injunction against the defendant. The plaintiff is in possession and enjoyment of the suit schedule properties after the death of their mother in respect of suit schedule item no.1 property and after succeeding for the share, the plaintiff is in peaceful possession and enjoyment in respect of the suit schedule item no.2 property. The plaintiff learnt that the defendant has fabricated the documents in respect of the ‘A’ and ‘B’ schedule properties against the Transfer of Property Act and the same is against the law. When the plaintiff preparing to adduce evidence at that time, she learnt that she has to seek possession in view of the Judgments rendered by the High Courts and the Apex Court. The plaintiff is in continuous possession of the suit schedule property and as such she has filed the present application for amendment of plaint. If the application is not allowed, the plaintiff will be put to great hardship which cannot be compensated in any terms, in contrary, if the application is allowed, no hardship or injustice will be caused

to the defendants. Hence, the plaintiff prayed to allow the application.

3. The defendant filed objection to the said application contending that application filed by plaintiff is not maintainable either in law or on facts and the same is to be dismissed in limine. The plaintiff has not produced any revenue documents in order to substantiate her possession over the suit schedule property. The plaintiff on the earlier occasion on 30-07-2015 filed similar application U/O.6 rule 17 R/w.Section 151 of C.P.C. and got amended the plaint and now once again filed the present application which is not permissible in law. The plaintiff in the affidavit annexed with the application mentioned as defendant no.3 but there is only one defendant, as such it indicates that the plaintiff has filed this application only to abuse the precious time of the Court. Therefore, the application filed by the plaintiff U/o.6 rule 17 R/w.Section 151 of C.P.C. dated 13-03-2019 has to be dismissed with cost. Therefore, prayed to dismiss the application.

4. The plaintiff has filed memo stating that due to typographical error it was mentioned in the affidavit as defendant no.3 though there is only one defendant in the present case. Therefore, the said error regarding the defendant no.3 may be considered as defendant in the interest of justice.

5. On considering averments of I.A. affidavit and objections, points that would arise for my consideration are as under:

1. Whether the I.A. filed by plaintiffs U/o 6 Rule 17 R/w.Section 151 of C.P.C. is deserves to be allowed and whether proposed amendment is necessary to adjudicate real question of controversy in between the parties?

2. What Order?

6. Heard both sides.

7. My answer to the above points are as under:

Point No.1 : In the Affirmative ,

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

REASONS

8. Point No.1:- The plaintiff has filed this suit against defendant seeking the relief of declaration and permanent injunction in respect of the suit schedule properties. The plaintiff has sought amendment of the plaint in order to amend the prayer column and to insert the prayer to the effect that the plaintiff be declared as she is in possession and enjoyment of the suit 'A' and 'B' schedule properties.

9. On perusal of above referred proposed amendment it reveals that now plaintiff is intending to insert the relief of declaration to the effect that she is in possession and enjoyment of the suit schedule properties. It is to be noted here that while dealing with the applications for amendment is concerned, the Court cannot go into the merits of the case and further Court cannot go into the merits of the proposed amendment. However, Court has to consider two aspects, i.e., (1) whether the proposed amendment is necessary to adjudicate the real matter in controversy between the parties and (2) Whether the proposed amendment causes hardship or injustice to the other side.

10. Now keeping in mind the above principles, we have to consider the present application. On perusal of the order sheet it reveals that when the case was posted for plaintiff side evidence, at that time, plaintiff has come up with the present application. The order sheet further reveals that this Court has allowed the similar application filed by the plaintiff U/O.6 rule 17 of C.P.C. on 14-10-2015 and permitted the plaintiff to insert the prayer regarding declaration and other aspects.

11. Initially the present suit is filed for the relief of declaration and permanent injunction against defendants, thereafter by way of amendment the relief of declaration to the effect that the compromise entered in between one T. Mariyappa in O.S.No.166/2004 was not binding and further to declare that the Will dated 25-03-1996 or 18-03-2011 as void ab-initio. Further the plaintiff for alternative relief of possession, if the Court come to the conclusion that the plaintiff is not in possession of the suit schedule properties, then the defendant may be directed to hand over the possession to the plaintiff. On perusal of the plaint, it reveals that the plaintiff has specifically contended that she is in continuous possession and absolute owner of the suit 'A' and 'B' schedule properties.

12. In the affidavit sworn to the application, it was contended that the plaintiff at the time of preparing for evidence came to know that she intends to seek possession in view of judgments rendered by the Hon'ble High Courts and Apex Courts. Therefore, she intends to file this application. On perusal of the plaint, it specifically mentioned that the plaintiff all the while claimed that she is in continuous possession and absolute owner

of the suit schedule property. Therefore, the proposed amendment to declare that the plaintiff is in possession and enjoyment of the suit 'A' and 'B' schedule properties is nothing but repetition of the plaint averments in the prayer column. More over the plaintiff has an opportunity to insert the proposed amendment in the earlier occasion and when plaintiff sought for amendment of pliant, but for the reasons best known to the plaintiff, the plaintiff has not mentioned the proposed amendment in the said application. It is also interesting to note the time and stage when the present application is moved, on perusal of the order sheet, ,it reveals that when the case is posted for plaintiff evidence on 28-06-2017 and thereafter the plaintiff counsel prays time for adducing the evidence till 05-03-2019. In the said aforementioned period, the Court has imposed costs on the plaintiff on several hearing dates as the plaintiff was not ready to adduce the evidence. The plaintiff without adducing the evidence, only in order to drag on the matter, has come up with the present application. More over in the entire averments of the interim application and affidavit, the plaintiff nowhere stated how the proposed amendment is necessary to adjudicate the real controversy in between the parties.

13. In the present case plaintiff has not explained as to how the proposed amendment is necessary to adjudicate real question of controversy between the parties. The plaintiff by way of the proposed amendment is trying to seek the relief that she is in possession and enjoyment of the suit 'A' and 'B' schedule properties. Further on perusal of the contents of I.A. and affidavit, nowhere it is stated how the proposed amendment is necessary in order to adjudicate the real question in controversy between the parties. Therefore, considering all these aspects, it can be said that the proposed amendment is not necessary to adjudicate the real

controversy in between the parties. Moreover, if the proposed amendment is allowed it would definitely surprise the defendant. The plaintiff in her affidavit annexed to the I.A. stated that the plaintiff was unable to insert the proposed amendment aspects at the time of filing of the suit due to some inadvertence. Now she came to know the said facts it goes to show that the plaintiff was not diligent in order to take the proposed amendment. Moreover, the proposed amendment is not necessary for the purpose of determining the real controversy in between the parties when such being the case, I.A. deserves to be dismissed. Hence, I answered point No. 1 in the 'Negative'.

14. Point No.2 :- For the findings given in point No. 1, Hence, I proceed to pass the following:

:: O R D E R ::

**I.A. filed by plaintiff Under Order 6
rule 17 R/w.Section 151 of C.P.C. dated
13-03-2019 is hereby dismissed.**

No order as to cost.

(Dictated to the Stenographer directly on Computer, typed by her, corrected and then pronounced by me in the Open Court on this 10th Day of June 2020).

**(Sandeep. A. Naik)
Principal C.J. & JMFC,
Doddaballapura**