

ORDER ON I.A U/O 6 RULE 17 OF CPC FILED BY THE PLAINTIFF

The learned counsel for plaintiffs filed IA u/O VI Rule 17 of CPC seeking to amend the plaint as prayed for in the application and the affidavit filed in support of the said application.

2. The defendant No.1 filed objections and prays to reject the application as per the grounds mentioned in the objection.

3. Heard the counsel for plaintiffs and defendant No.1. Perused the materials on record.

4. Following points arise for consideration of this court:

1. Whether the plaintiffs have made out grounds to allow the IA u/O VI Rule 17 of C.P.C.?

2. What Order?

5. The finding of this court to the above framed points are as follows:

1. Point No.1: In the Negative

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

for the following

REASONS

6. **Point No.1:** The plaintiffs are seeking to amend the plaint and insert in the plaint that they are the absolute owner of the Suit Schedule Property and they are in possession. The defendants colluded and created release deed dated 16.09.2020 and the same is not binding on the share of the plaintiff, Further they

claim that they are in possession of the Suit Schedule Property from past 70 years. The plaintiff also sought to include additional prayer to declare them as the absolute owner of the Suit Schedule Property and to declare that the registered release deed dated 16.09.2020 is not binding on their share and other reliefs as mentioned in the application. The application has been filed after the framing of issues and posting the case for plaintiff evidence. It shows that the application has been filed after the commencement of trial. Further in the affidavit of the plaintiffs they state that due to mistake of the earlier advocate and typical mistake and also due to inadvertence. Hence, he prays to allow the present application. The amendment sought by him is necessary to adjudicate the case and as such he prays to allow the application.

7. The defendant No.1 in the objection contended that the application cannot be entertained at this stage. The plaintiff has filed the application only to drag the proceedings and to rectify the errors made earlier in the plaint. He also contend that he has filed a suit in OS No. 350/2021 and in that suit order was passed in his favour. The plaintiffs challenged the order and filed appeal before the Additional Senior Civil Judge & Principal Senior Civil Judge in MA No. 6/2022 and MA No. 7/2021. Both of them were dismissed. The defendant No.1 has filed appeal before the Assistant Commissioner. And among other grounds he prays to dismiss the application.

8. The present application came to be filed at the stage of plaintiff evidence. As such the trial has already commenced. In such circumstances

the proviso to the Order VI Rule 17 becomes applicable. The plaintiff or the applicant has to show that inspite of due diligence he could not have raised the matter before commencement of trial.

9. The **Hon'ble Supreme court** in the case of **Chandan Kanta Bansal V/s Rajinden Singh Anand, reported in (2008) 5 SCC 117** held that due diligence means reasonable diligence, it means such diligence as the prudent man would exercise in the conduct of his own affairs.

10. As per the decision **Hon'ble Supreme Court in Rajkumar Guruwara V/s S.K. Sarwagi and Co.(P) Ltd., reported in (2008) 14 SCC 364**, If the amendment sought to be inserted is going to change the nature of the suit, introduce new cause of action and prejudice the other party, if the application is allowed it defeats the limitation law then the court can reject the grant of application for amendment.

11. In the present case the plaintiffs have stated that due to typing error and inadvertence they have not pleaded said facts at the earlier instance. The same cannot be held that the plaintiff has exercised due diligence. Also if the amendment is allowed then it will change the nature of the suit. As the plaintiff has filed the present suit seeking the relief of permanent injunction and also there are no issues framed stating that bare injunction suit is not maintainable. Also in the application and affidavit the plaintiffs contended that earlier counsel has not pleaded the same due to mistake. The perusal of the records shows that the plaintiffs have not changed the counsel. By relying on the above mentioned

decisions this court is of the opinion that the plaintiff has not made out grounds to allow the present application. As such **Point No.1 answered in the Negative.**

12. Point No.2: For the reasons mentioned above this court proceeds to pass the following:

ORDER

IA filed by the plaintiff u/O VI Rule 17 of CPC is hereby dismissed.

For plaintiff evidence by 19.08.2025.

Sd/-

**II Addl., Civil Judge & JMFC,
Doddaballapura.**