

IN THE COURT OF THE I ADDL CIVIL JUDGE & JMFC.,
NELAMANGALA

PRESENT: Smt Chinmayee.R.H., B.A.L. LL.B.,
I Addl. Civil Judge & JMFC,
Nelamangala.

Dated this the 14th day of February 2020

O.S.No.396/2017

Plaintiff/s: Sri Thimmarajamma
W/o Venkatesh,
Aged about 38 years,
R/at. Pete Beedi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

/Vs/

Defendant/s: Smt Manjamma
W/o late Ganganna,
aged about 60 years,
R/at. Agasara Beedhi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

PARTIES IN IA NO.1

Plaintiff/Applicant: Sri Thimmarajamma

/Vs/

Defendant/Opponent: Smt Manjamma

ORDERS ON IA.NO.1

The plaintiff has filed this application to amend the plaint as per the proposed amendment.

2. In the accompanying affidavit annexed to the application, the plaintiff submits that the plaintiff has filed this suit against the defendant for the relief of Permanent Injunction. It is submitted that the plaintiff is the absolute owner of the suit schedule property purchased from her vendor Theertha Prasad and after the purchase the plaintiff along with her family members are in possession of the suit schedule property. After the purchase the plaintiff has renovated the internal walls and extended the first floor. Later the plaintiff has put up a compound wall on the southern side of the suit schedule property and the defendant is trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property. In this regard, the plaintiff had given

complaint to the police on 15.10.2017, but the police had not register the case. The defendant has filed a false and frivolous written statement claiming counter claim without having any proof or documents over the plaint schedule property. It is submitted that while drafting the plaint though all sorts of care was taken, certain basic averments were not stated in the plaint and hence this application is filed for effective adjudication of the suit and also to avoid miscarriage of justice and multiplicity of proceedings. If the application is allowed no prejudice would cause to the defendants nor will lead to miscarriage of justice and hence prays to allow the application.

3. The defendant has objected the above application stating that the proposed amendment are pertaining to the details of tracing of title of the suit schedule property alleged to be owned by the plaintiff are not relevant for the purpose of deciding the issue between the parties. It is submitted that the plaintiff by filing above application is seeking to change the nature of the suit by altering the cause of action already alleged in the plaint and by substituting the same with different cause of action which is not permissible under law. If such change of cause of action is allowed, it will change the nature of suit thereby altering the entire cause of action and thereby prays to dismiss the application.

4. Heard the learned counsels.
5. The following points arise for my consideration:
 1. Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties?
 2. What order?
6. Based on the materials placed on record, I answer to the above points is as follows:
 - Point No.1 - In the Negative
 - Point No.2 - As per the final order for the following:

REASONS

Point No.1: The plaintiff has filed this suit for the relief of Permanent Injunction based on a cause of action dated:25.10.2017 when the defendant made hectic attempt to interfere with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. By way of this application the plaintiff intends to amend the date of cause of action and also intends to mention the details of the acquisition of the suit schedule property. This application is heavily resisted by the learned Advocate for the defendant that the change of cause of action totally alters the nature of the suit. There is much weightage and force in the arguments

canvassed by the learned counsel for the defendant that by amending the cause of action the nature of suit changes. But in the instant case, it is a case where the plaintiff intends to alter the date of cause of action as 15.10.2017 instead of 25.10.2017. This submission of the plaintiff is supported by producing a photocopy of the complaint addressed to the Police Sub Inspector, Thyamagondlu Police Station by the plaintiff on 15.10.2017. No doubt this document bears the date: 15.10.2017 but the said document is a photocopy and it does not bear the signature nor the seal of the receiving authority. It is also important to mention here that this document was not produced by the plaintiff on the date of filing of the suit. This document is produced by the learned counsel for the plaintiff only during the course of arguments on this application. There are also no supporting documents to show that the plaintiff did lodge a complaint on 15.10.2017 and not on 25.10.2017 as averred in the plaint. Had the police really received the complaint of the plaintiff on 15.10.2017 then they would have definitely given an endorsement to that effect. On the contrary, the plaintiff has at this stage failed to produce a document in support of her contention that the alleged cause of action was on 15.10.2017 and not on 25.10.2017. As the contention of the plaintiff is not corroborated by any of the documents, this court deems it fit that changing the date of

cause of action would amount to changing the cause of action for filing of the suit. Cause of action in a suit has a prominent role to adjudicate the matter in issue. There also appears that no typographical error was committed with respect to mentioning the date of cause of action. In addition to this, as rightly contended by the learned Advocate for the defendant that the acquisition of property has meager significance in a suit for injunction. This court finds that there are no merits to allow the application and accordingly answered in the Negative.

Point No.2: For the reasons discussed supra, I proceed to pass the following:

ORDER

IA.No.1 filed by the plaintiff
under Order 39 Rule 1 and 2 R/w
151 CPC is hereby rejected.

(Directly dictated to Stenographer through computer, revised and corrected by me and then pronounced in the Open Court, on this, the 14th day of February 2020)

(Chinmayee.R.H.)
I Addl. Civil Judge & JMFC.,
NELAMANGALA

