

ORDERS ON IA NO.3

This application is filed by the plaintiff with a prayer to bring certain pleadings in para No.3 of the plaint by way of amendment.

2. In the affidavit attached to the application, it is stated that, the suit schedule property had been granted by the Assistant Commissioner, Chikkaballapur vide No.BS LAQ F-33/75-76 dated 19.07.1980 and in pursuance of the same the BDO, Gauribidanur has issued grant certificate in favour of plaintiff on 28.07.1980 subject to certain conditions. As the land is the granted land, he has no right to alienate the property till completion of non-alienation period and he belonged to Adi Karnataka Community which comes under schedule caste, hence without prior sanction from competent authority he cannot alienate the property. The 2nd defendant who is his own brother and 3rd defendant who is his second wife have no right, title and interest in the property, however the 2nd and 3rd defendant have got katha in their names in respect of property without the knowledge of the plaintiff, that the defendants in collusion with grama panchayath have created the records. Under these circumstances, it is very necessary to amend the plaint as prayed for in the application. Hence, prayed to allow the application.

3. On the other hand, the defendant has filed objections to the said application contending that, the application has been filed with an intention to cause hardship and injury to the proposed

defendants, the applicant has not approached the court with clean hand, he has not challenged the sale transactions since long period, the proposed amendment is not at all required. Hence, prayed to dismiss the application.

4. Heard.

5. The point that would arise for my consideration is as to:

1. Whether the applicant/plaintiff shown reasons to allow the proposed amendment?

2. What Order?

6. My answer to the above point is as follows:

Point No.1: In the Affirmative

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

REASONS

7. It is not in dispute that, the plaintiff has filed the suit at hand seeking relief of permanent injunction against the defendant. On going through the proposed amendment sought for in the application it is almost in the form of continuation of earlier pleadings of the plaint, therefore if the same is allowed, it will neither change the nature of suit nor cause of action for the suit. Hence, if the proposed amendment is allowed, nothing harm or injustice would cause to the other side.

8. In a recent decision reported in 2012 (3) KCCR 1926, the Hon'ble Supreme Court of India in the matter of **Ramesh Kumar Agarwal V/s Rajmala Exports Pvt. Ltd and Others**, has held that

“liberal approach should be the general rule particularly where the other side can be compensated with costs”.

9. In another decision reported in **2009 AIR SCW 6644 and (2012) 5 SCC 337, between Rajesh Kumar Aggarwal V/s Rajmala Exports Private Limited**, our Hon’ble Supreme Court of India held that purpose and object of Order 6 Rule 17 is allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. Power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by the various High Courts and Supreme Court. Further, it is held that the courts while deciding such terms should not adopt a hyper technique approach, liberal approach should be the general rule particularly in cases where the other side can be compensated with cost. Amendments are allowed in the pleadings to avoid uncalled multiplicity of litigation. Thus, from the above it is clear that, while allowing amendment courts should adopt liberal approach instead of hyper technical approach. The main object of the provision is to avoid multiplicity of proceedings. If the proposed amendment is allowed, no harm or injustice would cause to the plaintiff. On the other hand, if the amendment is not allowed, the parties will be put to great hardship and inconvenience and it may lead to multiplicity of proceedings. Hence, for the above said reasons and keeping in view above the

said well settled principles of law, I answer the **Point No.1 in the Affirmative.**

10. **Point No.2:** In view of my discussion on Point No.1 above, and having regard to the facts and circumstances of the case, I proceed to pass the following:.

ORDER

IA No.3 filed by the plaintiff under Order 6 Rule 17 R/w Section 151 of CPC is hereby allowed on cost of Rs.100/-.

The plaintiff is hereby permitted to amend the plaint in terms of the prayer made in the application.

Call on for amendment by 01.07.2015.

(B.K.RAVIKANTHA)
Pri. Civil Judge & JMFC,
Gauribidanur.