

ORDERS ON IA NO.VII

Counsel for plaintiffs filed petition U/Order 6 Rule 17 R/w Sec.151 of CPC for seeking amendment to plaint. Defendant No.3 counsel filed objection for the same.

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

Plaintiffs filed the suit for partition and separate possession seeking their share against defendants with respect to the suit schedule properties. Plaintiff submitted that due to typographical error and oversight he has not sought for the relief of declaration as stated in his affidavit. The proposed amendment is sought by plaintiffs as defendants have denied the grant made in favour of plaintiffs' father through Hakku Patra dated 26.02.1992. They have further submitted that the proposed amendment will not change the nature of suit nor cause any prejudice to the other side and to avoid multiplicity of litigation the proposed amendment is sought.

On the other hand defendant No.3 counsel submitted that proposed petition is not maintainable under law. It is further submitted that the proposed amendment will change the nature of suit and cause of action. Hence pray for dismissal of the petition.

I have perused the pleadings submitted by both the parties. Plaintiffs sought for the relief of partition and separate possession against defendant No.1 and 2 and the relief of permanent injunction is sought against defendant No.3. Defendant No.3 in his written statement denied the title of plaintiffs. Hence Court has framed an issue with respect to the said facts. Therefore now plaintiffs have come up with the proposed amendment as prayed to avoid multiplicity of the proceedings.

As it is settled principle of law that amendment should be liberally exercised, but the liberal principles which guide the exercise of discretion in allowing the amendment are to avoid multiplicity of proceedings and to determine real question between the parties.

In the present case in hand proposed amendment will not change the nature of suit nor cause of action. The proposed amendment flow from same set of facts. There is no separate cause of action raised by plaintiffs through proposed amendment. Since the plea of declaration flows from the same cause of action, the proposed amendment sought by plaintiffs will avoid multiplicity of the proceedings. Further it will enable the court to determine the real question in issue between the parties and no injury would be caused to the other side. By the said amendment no party would suffer any in justice nor alter or substitute the cause of

action on the basis of which original lis is raised. There is no inconsistent or contradictory allegations made by plaintiffs through proposed amendment. Therefore plaintiffs should not suffer on account of technicalities of law. Hence proposed amendment should be allowed to minimize the litigation between the parties. The delay in seeking the proposed amendment can be compensated by imposing cost. Accordingly, I pass following;

ORDER

The petition filed by plaintiffs U/O 6 Rule 17 R/w Sec.151 of CPC as IA No.7 is hereby allowed with cost of Rs.200/-.

Plaintiffs are hereby directed to carryout necessary amendment to the plaint and submit amended plaint on or before 17.07.2023.

II Add.Sr. Civil Judge &
JMFC, Chitradurga.