

ORDERS ON I.A. FILED UNDER ORDER 6 RULE 17 R/W
151 OF CPC

The plaintiffs have filed I.A. U/O 6 Rule 17 R/w Sec.151 of CPC for amendment of plaint schedule item no.4 in 2nd line i.e., deleting the place as “T.N. Kote” and insertion of the place as “Konigarahalli”.

2. The gist of the plaintiff's application is as follows:-

The plaintiff no.1 has sworn to an affidavit as, the plaintiffs have filed the suit for the relief of partition and separate possession with respect to the suit schedule property. The present application has filed for amendment of place in schedule of the plaint. At the time of filing suit, mistakenly typed the place as “T.N. Kote” and instead of place as “Konigarahalli” in schedule 2nd line of the plaint. Therefore, if the application is allowed no harm or loss cause to the defendant and if the application will not be allowed the plaintiffs will be put to great hardship and loss. Hence, prays to allow the application.

3. On the other hand, the defendant has filed objections to I.A. filed by the plaintiffs contending that, the application filed by the plaintiffs is not maintainable under law. The plaintiffs have stated all false allegations in the affidavit. The plaintiffs have filed this application, only drag on the proceedings. If the application is allowed, it will changes the nature of suit and also cause of action. Hence, prays to reject the application with cost.

4. Heard both the parties and perused the materials available on record.

5. The points that arise for my consideration are here under:-

POINTS

1) Whether the plaintiffs made out sufficient reasons to allow the application filed under Order 6 Rule 17 R/w Sec.151 of CPC ?

2) What Order?

6. My findings to the above said points are as follows :-

Point No.1 :- In the affirmative.

Point No.2 :- As per the final Order, for the following:-

REASONS

7. **Point No.1** :- At the outset, the plaintiffs have filed the suit against the defendant for the relief of partition and separate possession in respect of suit schedule property. The plaintiffs have filed present application for seeking amendment to the plaint schedule Item No.4 in 2nd line i.e., deleting the only place as “T.N. Kote” and insertion of the place as “Konigarahalli”

8. In the present case on hand, the plaintiffs sought for amendment of the plaint schedule Item No.4 in 2nd line. On the other hand, the defendant has filed objections contending that, the proposed amendment is introduced the very nature of property will be changed and when the nature of property will be changed consequentially the very cause of action will be changed.

9. It is important to consider that, whether the trial has commenced or not?. In the case on hand, the matter is posted

for hearing. The plaintiffs have filed present application wherein the proposed amendment will not change the neither cause of action nor nature of suit since, the amendment sought by the plaintiffs is typographical mistake. Moreover, if the application is allowed and amendment carry out to the plaint, the defendant has right to file additional written statement. Therefore, Keeping in view the principles of order 6 rule 17 of CPC. Hence, I am of the opinion that, the proposed amendment sought by plaintiffs which is necessary for the purpose of determine the real controversy between the parties. The fact of the present case warrants the proposed amendment to adjudicate matter effectively. The amendment sought by plaintiff is arising out of plaintiff's suit and rights of the parties. As per order 6 rule 17 of CPC proviso which says "Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial ". As per the order 6rule 17 first part, the court may at any stage of the proceedings allow either party to alter and amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. While dealing with amendment application court should consider, whether the proposed amendment sought by either of the parties is with due diligence?. In the case on hand, the plaintiff's proposed amendment is at the very initial stage of hearing. The plaintiffs

though have filed present application in a reasonable time, it deserves to be allowed since the prayer of the plaintiffs sought through amendment is required for adjudicate the matter effectively. On the other hand, the defendant has got right to rebut the prayer of the plaintiffs with material facts and evidence. The plaintiffs sought amendment to the plaint is proper one. If the present application is not allowed it will lead to multiplicity of proceedings and also causes delay to the proceedings. Therefore, the plaintiffs have made out sufficient reasons to allow the application. Hence I answer Point No.1 in affirmative.

10. **Point No.2** :- In the light of discussion made above, I proceed to pass the following:-

ORDER

I.A. filed U/o 6 Rule 17 R/w Sec.151 of CPC is hereby allowed.

The plaintiffs are directed to carryout amendment and furnish amended plaint as prayed for in the I.A.

Call on for amendment and amended plaint by: 16.01.2018.

Addl. Civil Judge & JMFC.,
Challakere.