

KACD420002762015



IN THE COURT OF THE ADDL.CIVIL JUDGE AND J.M.F.C.

AT HOLALKERE

Present : NIRUPAMA RENAKAPPA DHANG,
B.A.LL.B.
ADDL.CIVIL JUDGE AND J.M.F.C.
HOLALKERE

Dated: this the 10th day of August - 2023

OS No.118/2015

PLAINTIFF/S : Hanumanthappa @ Hanumantha Reddy
Aged about 50 years,

(By Sri K.S.J. Adv.)

V/s

DEFENDANT/S : Rangappa s/o Bidarekere Thippanna
and others
Aged about 75 years,

(By Sri J.T.S/K.P Adv for defendant No.1)
(By Sri M.B.A. Adv for defendant No.2, 4 to 6)
(By Sri M.S. Adv for defendant No.7, 9, 10)
(By Sri K.K.M. Adv for defendant No.3)

PARTIES TO I.A NO.X

APPLICANT/S : Hanumanthappa @ Hanumantha Reddy
PLAINTIFF/S

-V/S-

OPPONENT/S:
DEFENDANTS

Rangappa S/o Bidarekere Thippanna
and others
Aged about 75 years,

ORDER ON I.A No.X U/O VI R 17 CPC

The plaintiff has filed this application U/o VI R 17 R/w Sec.151 of CPC seeking permission to amend the plaint as mentioned in the schedule of this application, as it is necessary by allowing this application.

2. In the affidavit accompanying to the application the plaintiff has stated that, he has filed this suit against the defendants for the relief of Specific Performance of the Contract in respect of the suit schedule property. The suit is pending for consideration. It is stated that, during the pendency of the suit this Hon'ble Court has observed that, plaintiff should sought for alternative prayer in the suit, otherwise suit will become infructious. Accordingly, plaintiff has filed this application for amendment of the plaint as stated in the schedule. If the application is not allowed, it will cause heavy and irreparable loss to him and on the other hand, no loss, injury or hardship would be caused to the other side, if the application is allowed. Hence, he prayed to allow the application.

3. Per contra, the defendant No.1 has filed objection to the said application contending that application filed by the plaintiff is not maintainable in law or on facts and not bona-

fide and it is liable to be dismissed. The contents of the affidavit are all false and baseless. The plaintiff has not stated any valid ground in his application. It is contented that, already plaintiff has examined as PW-1 and the documents at Ex.P1 to P39 were marked and now the case was posted for cross of PW-1 hence, at this stage the application filed by the plaintiff is not maintainable. If the application is allowed, by amending the plaint, nature and character of the plaint would be changed and the defendant will be put to great loss and hardship. On the other hand, no loss or hardship would be caused to the other side, if the application is rejected. The application filed by the plaintiff is only to drag on the proceedings. Hence, they prayed to reject the application with cost in the interest of justice and equity.

4. Now the points that arise for considerations are as follows:

1. Whether the application filed by the plaintiff deserves to be allowed?
2. What Order?

5. Heard both the sides and perused the documents which are available on record.

6. My answer to the above points are as under:

Point No.1:-In the affirmative;

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

REASONS

7. **Point No.1:-** In the accompanying affidavit, the plaintiff has sworn to the fact that, he has filed this suit against the defendants for the relief of Specific Performance of the Contract in respect of the suit schedule property. The suit is pending for consideration. It is stated that, during the pendency of the suit this Hon'ble Court has observed that, plaintiff should sought for alternative prayer in the suit, otherwise suit will become infructious. Accordingly, plaintiff has filed this application for amendment of the plaint has stated in the schedule. Hence, the facts stated in the schedule of the application are very essential in order to prove the case of the plaintiff. On the other hand the defendant No.1 has contended that, already plaintiff has examined as PW-1 and the documents at Ex.P1 to P39 were marked and now the case was posted for cross of PW-1 hence, at this stage the application filed by the plaintiff is not maintainable. If the application is allowed, by amending the plaint, nature and character of the plaint would be changed and the defendant will be put to great loss and hardship.

8. This court has carefully gone through the application, affidavit and materials available on record. Admittedly, the above suit is filed by the plaintiff for the relief of specific performance of contract in respect of suit schedule property. On perusal of the materials available on record it is evident that the facts which the plaintiff now intended to

amended in the plaint was left behind without any mala-fide intention and the said error appears to be occurred due to inadvertence. The proposed amendment is necessary for the purpose of determining the real question in controversy between the parties.

9. As per the Section 22 of Specific Relief Act, where the plaintiff has not claimed any relief as to the refund of earnest money in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including the claim for such relief. Therefore, since the proposed amendment appears to be sought to rectify the bona-fide mistake and inadvertence, it can be said that, if the application is allowed by amending the application no loss and hardship would be caused to the defendants. On the other hand, it is helpful for just and effective adjudication of the matter and also for just determination of the Civil right and dispute of the parties to the suit. Otherwise, the multiplicity of proceedings would be arise and the plaintiff will be put to irreparable loss and hardship and great injustice, if the application is not allowed. Accordingly, the application filed by the plaintiff deserves to be allowed. Hence, I answer the above point in the affirmative.

10. **Point No.2:-** In view of the forgoing observations and discussions, this court proceed to pass the following:-

O R D E R

The I.A No.X filed by the plaintiff
U/o VI Rule 17 R/w Section 151 of CPC
is hereby allowed.

Plaintiff is permitted to amend the
plaint as per the schedule mentioned in
application.

No order as to costs.

(Dictated to the Stenographer, directly on computer, script corrected and then pronounced in the open Court on this 10th day of August 2023)

(Nirupama Renakappa Dhang)
Addl. Civil Judge & JMFC,
Holalkere.