

**IN THE COURT OF THE ADDL. CIVIL JUDGE & J.M.F.C.,
HOSADURGA**

PRESENTS

Smt. Thrinethra M.N.

M.A., L.L.B.,

Addl. Civil Judge & JMFC, Hosdurga

O.S.No.360/2018

DATED THIS 4th DAY OF SEPTEMBER-2024

Plaintiff : Smt. Lakshmi

(By Sri. E.T.R., Advocate)

Versus

Defendant : Sri. Chandrashekara.K and others

(D1 By Sri. S.M.K., Advocate

D2 By Sri. M.B.P., Advocate

D3 and 4 Ex-parte.,)

IA No.IV

Plaintiff/

Applicant : Smt. Lakshmi

Versus

Defendant/

Opponents :

Sri. Chandrashekara.K and others

COMMON ORDER PASSED ON I.A.No.IV

Applicant/plaintiff has filed this I.A.No.IV under order VI Rule 17 of CPC seeking amendment of plaint as per schedule mentioned in the application.

2. It is stated in the affidavit of plaintiff filed in support of application that, she is well acquainted with the facts and circumstances of the case. The proposed amendment is with respect to plaint as per schedule mentioned in the application. Therefore, it is necessary to amend the plaint as per proposed amendment. It is stated by the plaintiff that alleged marriage between defendant No.2 is come to the knowledge of this plaintiff and also came to know the fact that the marriage is registered on 12.08.2015. The marriage claimed by the defendant No.2 in the pleading is unlawful and it is null and void as per Hindu Marriage Act. It is further stated that, if the application is allowed, no hardship will be caused to the defendant and on the other hand, if the said application is rejected, she will be put into irreparable loss and hardship will be caused to plaintiff. Hence, prays for allow the application.

3. The defendant has resisted the application by way of filing objection. In the objections, it is contended that, the application of the plaintiff is not tenable under law as it is belated one and the proposed paragraph seek amendment by plaintiff is belated one, the plaintiff has created false facts and with a malafide intention to drag on the proceedings and to harass the defendant this application has filed and already she has lead both chief and cross examination and proposed

amendment will change the nature of the suit totally and there is prima facie material made out in the application and the application is not maintainable. Hence, it cannot be permitted to amend the plaint. Therefore, it is prayed to reject the application.

4. Heard both the Counsels.

5. Upon hearing and on perusal of materials placed on record, the following Points that would arise for my consideration:

POINTS

1. Whether the application filed by the plaintiff is liable to be allowed?
 2. What Order ?
6. My findings to the above Points are as under :
- Point No.1 : In the Negative
- Point No.2 : As per final order for the following :-

REASONS

7. **Point No.1** :-The plaintiff has filed this suit against the defendant seeking the relief of permanent injunction.

8. Herein, the application the plaintiff has sought for amendment of plaint with respect to proposed amendment. The proposed amendment is relating to the declare the marriage of defendant No.2 is null and void.

9. It is the arguments of learned counsel Sri. K N B advocate that, trial of the case has been commenced and almost all in conclusion stage. There is no original pleadings in the plaint regarding proposed amendment.

10. In regarding to the said line of argument it is important to note that, trial of the case is commenced and it is pending defendant evidence. There is no original pleadings in the plaint regarding proposed amendment. Even, undisputedly matter is pending for defendant 's evidence. That means trial of the case has commenced. So, in this background it is clear that, the plaintiff is intending to insert new facts with new allegation and also with new prayer.

11. It may be important to note that, defendant has filed his written statement on 25/07/2019 Issues have been framed on 28/01/2020. So, from the date of filing of written statement and framing of issues , the plaintiff had kept quite and now filed this application. But, no reasons have been assigned by her for not filing the present application on earlier occasions. This failure part of the plaintiff shows she was not in due diligence in connection to the proposed amendment. Herein the case already trial of the case has commenced and pending for defendant's evidence.

12. Further, it is important to note that, the proposed amendment is introducing another cause of action which is not within the parameters of the original cause of action. In such case, amendment cannot be allowed.

13. As discussed herein above the plaintiff had an opportunity to file her contention but the reason assigned by the plaintiff is not aware of this aspect after changing the counsel the plaintiff came to know about this aspect therefore she filing the amendment but as per the record she changed the counsel on 27.02.2023. After changing her counsel there are several opportunity to file proper application. Hence, the changing of the counsel can't be the ground for allowing this application. This facts makes clear that, the plaintiff was not due diligence in bringing proposed amendment . In view of proviso of order 6 rule 17 of CPC the application is not maintainable. Further, the proposed amendment is not at all necessary to determine dispute involved in the suit. Hence, there is no sufficient grounds to allow the application. ***Hence, this court answered the Point No.1 in the Negative.***

14. **Point No.2:-** In view of the reasons assigned in above, this court proceed to pass the following :

ORDER

I.A.No.IV filed by the plaintiff under Order

VI Rule 17 of CPC is rejected.

(Dictated to the Stenographer on Computer directly, typed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 4th day of SEPTEMBER-2024)

(Thrinethra M.N.)
Addl. Civil Judge & JMFC,
Hosadurga.

(Order pronounced in the open court vide Separate)
ORDER

I.A.No.IV filed by the plaintiff under Order

VI Rule 17 of CPC is rejected.

For defendant evidence

Call on 09.09.2024

(Dictated to the Stenographer on Computer directly, typed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 4th day of SEPTEMBER-2024)

**Addl. Civil Judge & JMFC,
Hosadurga.**