

ORDERS ON I.A.NO.VI

The present application is filed at the stage of defendant evidence. The plaintiff has filed the present application U/O 6 Rule 17 of CPC seeking leave of this Court to amend the plaint by inserting additional fact regarding the error in mentioning boundaries to the suit property in the sale deed and gift deed relied upon by him.

2. The plaintiff has filed an affidavit in support of present application wherein contended that after his cross-examination, he came to know about the error in not mentioning the correct boundary to the suit property in the sale deed dated 26.08.2013 and gift deed dated 25.11.2014. Therefore, he got rectified the gift deed on 08.07.2024. This aspects are to be pleaded in the plaint. On these grounds, the plaintiff prays for allowing the present application.

3. On the other hand, the defendant has filed its objections to the present application contending that the proposed amendment cannot be permitted as the same is sought after completion of plaintiff evidence. Plaintiff cannot take shelter on his cross-examination about the alleged discrepancies. The very same boundary to the suit property is shown by the plaintiff in the suit in OS.No.148/2018 on the file of Addl. Civil Judge & JMFC,

Mudigere. There is no due diligence on the plaintiff. On these grounds, the defendant has sought for rejection of the present application.

4. Heard the arguments of both side and also perused the materials available on record.

5. In view of the above contentions of the both parties, the following points arise for consideration of the above application;

1. Whether the plaintiff has made out sufficient grounds that the proposed amendment is necessary for determination of real question in controversy and the same doesn't change the nature of suit?

2. Whether the plaintiff has made out that proposed amendment do not prejudice the case of defendants?

3. What order ?

6. The answers of this Court for the above points for consideration are as follows;

Point No.1: **In the Affirmative**

Point No.2: **In the Affirmative**

Point No.3: As per final order
for the following:

REASONS

7. POINT No.1 AND 2: Since these points require common consideration in order to conclude the decision on the present

application, the same are taken for common discussion.

The above suit is filed for the decree of permanent injunction with respect to the suit schedule property. The present application came to be filed seeking leave of this Court to amend the plaint to add the fact about discrepancy of the boundaries to the suit property in the sale deed and gift deed relied upon by the plaintiff. The present suit is now at the stage of defendant evidence and thus it is necessary here to examine whether the proposed amendment is necessary for adjudication of real controversy between the parts and the same doesn't change the nature of suit or prejudice the other side.

8. The present application is based on the sole ground that the error in misdiscreption of boundary as stated is noticed only after the cross-examination of plaintiff. On the other hand the defendant has contended that the plaintiff cannot take shelter under the guise of his cross-examination and amendment cannot be permitted after completion of plaintiff evidence. It is germane here to refer the decision of Hon'ble Apex Court in the case of **Life Insurance Corporation of India V/s Sanjeev Builders** reported in **2022 SC 4256** wherein, Hon'ble

Apex Court has laid down guidelines regarding amendment of pleadings that if the amendment is required for effective and proper adjudication of the controversy between the parties; to avoid multiplicity of proceedings and if the amendment does not result in injustice to the other side, the prayer for amendment generally shall be allowed.

9. On co-joint reading of Order 6 Rule 17 CPC along with the above referred decision, if the proposed amendment is looked into, the same is to add the fact regarding the boundary of suit schedule property. The present suit being one for bare injunction with respect to the immovable property, the proper description of suit property plays vital role in adjudicating the matter. Though the defendant has resisted the application, it is always for the plaintiff to prove the boundary of the suit property. If the plaintiff is permitted to amend the plaint, then certainly the defendant will have an opportunity to place additional defence regarding the same. Therefore, it cannot be held that the proposed amendment is not necessary. No new case will be introduced by allowing the proposed amendment and the same will not prejudice the other side. If the proposed amendment is not permitted then there will be multiplicity of

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proceedings. Hence, this Court answers points No.1 and 2 in "**Affirmative**".

10. Point No.3: In view of the reasons recorded on the above Point No.1 and 2, this Court deems it fit to allow the present application, however, on costs. Hence, the following:

ORDER

I.A.No.VI filed by the plaintiff U/O 6 rule 17 R/w section 151 of CPC is hereby allowed on cost of Rs.500/-.

Plaintiff is permitted to carryout amendment in the plaint as sought for in I.A.No.VI.

For carrying out amendment, to file amended plaint by: 12.09.2025.

Sd/-
(Vishwanath A.)
Prl. Civil Judge & JMFC.,
Mudigere.