

ORDER ON IA.No.13

When the case posted for arguments, the instant application being filed by the plaintiff.

2. The instant application has been filed by the plaintiff U/o 6 Rule 17 R/w 151 of CPC., to amend the plaint as proposed in the application. In accompanying affidavit, the plaintiff averred that, due to oversight, while filed the suit, the extent of Sl.No.6 property has been mentioned as 6.14 acres instead of 0.10 acre and same has been noticed recently. *Hence, prayed to allow the instant application.*

3. On the other hand, the defendants have filed oral objections and contended that, the application filed by the plaintiffs is not maintainable either under law or on facts. The proposed amendment is not necessary to adjudicate the matter. No reasonable grounds made by the plaintiff to allow the instant application. Along with other grounds, *prayed to dismiss the same with exemplary cost.*

4. The learned counsel for the defendants has relied upon the following decisions;

1. (2003) 3 KCCR 2233, between Nanjappa V/s Maimanna (Deceased) by L.Rs, and others.

2. ILR 200 KAR 571, between B.Subramanya V/s Kushal Chand.

4. Heard the arguments and perused the materials placed on record.

5. The point that arises for consideration is as follows;

-: P O I N T S :-

(a). Whether the plaintiff has made out sufficient grounds to allow the instant application ?

(b). What order ?

6. This court answered the above point in the **Affirmative** for the following ;

-: R E A S O N S :-

POINT NO.1:-

7. The plaintiffs filed the present suit for the relief of declaration and filed the instant application prayed to amend the plaint as prayed in the application.

8. On perusal of contents of affidavit filed by the plaintiff and objections filed by the defendants, the plaintiff is averred that, the defendants denied the averments made by the plaintiff in the plaint and the proposed facts known to the plaintiff recently. Hence, it is just and necessary to amend the plaint as prayed in the application.

9. As per Order VI Rule 17 of the CPC., that no application for amendment is to be allowed after the trial has commenced, unless Court comes to the conclusion that, inspite of due diligence, parties could not raise the matter before

commencement of the trial. Now the case was posted for arguments.

10. The Hon'ble Supreme Court of India in P.H. Patil vs. K.S. Patil held that **"Courts should by the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side"**.

11. Hence, taking into consideration of the facts and circumstances of the case, this court feels that, it would be proper to allow the instant application in order to adjudicate the real questions involved in this case. Moreover, the plaintiff seeking the extent of Sl.No.6 property has been mentioned as 6.14 acres instead of 0.10 acre and same has been noticed recently, the proposed amendments are necessary for proper adjudication of the suit. Therefore, this court comes to a conclusion that, the plaintiff has made out grounds to allow the instant application. *Therefore, in the interest of justice and equity, this court answered the point No.1 in the "Affirmative".*

POINT NO.2:-

12. In view of the above discussions, this court proceed to pass the following;

ORDER

The IA.No.13 filed by the plaintiff U/o
VI Rule 17 R/w 151 of CPC., is hereby
allowed on cost of Rs.500/-.

For amendment and amended plaint.

Sd/-

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
MUDIGERE.