

ORDER ON IA.No.7

When the case posted for appearance of defendants, the instant application being filed by the plaintiffs.

2. The instant application has been filed by the plaintiff U/o 6 Rule 17 of CPC., to amend the plaint as proposed in the application. In accompanying affidavit, the plaintiffs averred that, due to typographical error, the proposed amendment is not mention in the plaint earlier. But it is necessary to adjudicate the dispute between the parties. *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 plaintiffs to allow the instant application. Along with other grounds, *prayed to dismiss the same with exemplary cost.*

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 plaintiffs have 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 easement rights and permanent injunction in respect of the suit schedule property 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 plaintiffs and objections filed by the defendants, the plaintiffs are averred that, the defendants denied the averments made by the plaintiffs in the plaint and the proposed facts known to the plaintiffs 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 the cross of the PW.1.

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 plaintiffs seeking the correction of typographical error in respect of survey number and extent of the suit schedule property, the proposed amendments are necessary for proper adjudication of the suit. Therefore, this court comes to a conclusion that, the plaintiffs 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.7 filed by the plaintiffs U/o
VI Rule 17 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.