

**ORDERS ON I.A.NO.XI FILED BY THE
PLAINTIFF U/O VI RULE 17 R/W 151 OF
CPC**

I.A.No.XI filed by the plaintiff U/o VI rule 17 of CPC to permit the plaintiff to amend the plaint as prayed in the application.

2. In the affidavit annexed to the application the plaintiff stated that, he has filed the suit for declaration and possession of the suit schedule property. Plaintiff stated that the defendant No.1 to 4 partitioned the suit schedule property on 04/09/2020 as per the partition deed bearing No.1061/2020-21. The earlier survey number of the suit schedule property was 395/4, after durasth the new Sy.No. 395/6 has been assigned. The defendants during the pendency of the case partitioned the said property hence it is very much necessary to cancel the said partition deed.

Hence, plaintiff prayed to allow the application.

3. On the other hand the defendants have filed objection to the IA No.XI. In the objection defendants stated that the reason assigned by plaintiff for amendment is all false and imaginary. The relief claimed by the way of amendment is barred by limitation. Hence application cannot be allowed. The plaintiff cannot be permitted to withdraw the admissions made in the plaint by way of amendment. If the amendment is allowed then it will take away the accrued right of the defendants. Plaintiff intend to introduce a new case by way of amendment which cannot be allowed. The plaintiffs have not placed any materials to support their contentions by way of amendment. Even otherwise amendment is not necessary for just decision in the suit. Application is filed in order to delay the proceeding. Hence, defendants prayed to dismiss the application.

4. Heard the arguments on IA No.XI by both side and perused the documents.

5. Now the point that arises for my considerations are:

1. Whether the application filed by the plaintiff is maintainable under law?

2. What order?

6. My findings to the above points is as follows:

Point No.1: In the Affirmative

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

R E A S O N S

7. **POINT NO.1:** In this case the plaintiff has filed present application under order 6 rule 17 of CPC to amend the plaint. The order VI rule 17 of CPC empowers the court to permit the parties to amend their pleadings if it is made out that the proposed amendment is necessary to elucidate the matter in dispute. It is

established principle that the amendment application have to be liberally dealt with and whenever it is made out that amendment is necessary to elucidate the matter in dispute and to avoid the multiplicity of proceedings. Then such application has to be allowed. The proposed amendment will not change the nature of the suit. Moreover, in the present case the evidence of plaintiff not yet commenced. This court relied on the decision reported in (2002) 7 SCC 559 between Sampath Kumar V/s Ayyakannu and and others. In the said judgment the Hon'ble Appex Court held as follows:

“Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application

for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment”.

8. The principle laid down in the above judgment aptly applicable to the case on hand. In the present case the evidence of plaintiff not yet commenced. To avoid the multiplicity of proceedings the application filed by the plaintiff deserves to be allowed.

Thus I hold that in the interest of justice the application filed by the plaintiff has to be allowed by imposing compensatory cost for delay in filing the application. Hence, I answered point No. 1 in the Affirmative.

9. POINT No.2. In view of the above reasons this court proceed to pass the following:

ORDER

I.A.No.XI filed by the plaintiff U/o. VI rule 17 of C.P.C., is hereby allowed on cost of Rs.200/-.

Case posted for amendment of plaint and to furnish amended plaint.

(JAYAPRAKASH V)
SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.