

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

I.A.No.I filed by the plaintiff U/o VI rule XVII of CPC to permit the plaintiff to amend the plaint as per schedule of the application.

2. In the affidavit annexed to the application the plaintiff stated that, he has filed the suit against the defendants for the relief of declaration, recovery of possession, for permanent injunction and for mesne profit. Plaintiff stated that he had also filed suits before Prl. Civil Judge and JMFC, Mudigere for recovery of possession of the plaint

schedule property from the tenants / defendants who were in possession of the part of the plaint schedule property vide O.S.No. 3/2019 Afroz Ahamed Khan, 4/2019 zeenath Unnisa, 6/2019 M.R. Sanaulla, 7/2019 Smt. Farida and 8/2019 Smt. Sudha. The defendants in the said suit have filed their written statement admitting that they have delivered the possession of the plaint schedule property to the defendants in this suit. Therefore plaintiff got dismissed the said suit for the pendency of this suit.

3. Plaintiff further stated that, earlier plaintiff has filed the present suit before the Prl. Civil Judge and JMFC, Mudigere. Thereafter the plaint has been returned to the plaintiff for present the same before jurisdictional Court.

4. Plaintiff further stated that, he has recently received certain documents from the previous owner of the suit schedule property i.e., S.K. Syed Arif Ahammed regarding registered sale deed executed by M.A. Noor Mohammed, S/o Late Hazi. B. Abbas and his wife B.M. Zohar Banu (defendant No.1) in

favour of G.H Chandregowda and a registered agreement of sale executed by M.A. Noor Mahammed, S/o Late. B. Abbas agreeing to execute registered sale deed. The said document / registered sale agreement and other correspondence papers pertaining to the loan transactions are collected from Sri. S.K. Syed Areef Ahammed. The plaintiff has not averred about these documents held with previous owner and got these documents from him recently. That the averments with regards to these documents are very necessary and the same are not averred in the plaint, otherwise it may go adverse if only evidence is introduced without the foundation of pleadings. Therefore the plaint is to be amended in order to reveal about the execution of the documents and other transactions between the M.A. Noor Mohammed, S.K. Areef Ahammed and the plaintiff and the said pleading will also assist the Court for proper and effective adjudication of the controversy between the parties.

5. The defendants have continued to be in ill-legal possession in the plaint schedule

property therefore it is required to be substitute new schedule i.e., the entire property of the plaintiff as mentioned in the schedule of the application. Therefore the amendment of the schedule is necessary otherwise the purpose of the suit will not survive.

6. Plaintiff further submitted that plaintiff has not averred about one of the document / agreement executed by M.A. Noor Mohammed in favour of S.K. Rafeeq Ahammed agreeing to vacate the plaint schedule property in which he was in possession and the remaining part of the plaint schedule property by recovering possession of the same from the tenants on 02/09/2012. The particulars of this document is also not averred / pleaded in the plaint and the non-pleading of the same is a technical impediment may result in adverse to the claim of the plaintiff. The introduction of the evidence with regard to the same will not be a beneficial without pleadings. Recasting of the pleadings in accordance with the transaction between the plaintiff and defendants with regard to the suit schedule property is very

necessary and it's only elaborating facts already pleaded by plaintiff in chronological order will assist the Court for proper and effective adjudication of the controversy between the parties. That the proposed amendment will not change the cause of action, nature of the case and it will not affect any right of the adverse party. The amendment is essential for proper adjudication of the suit. Hence the plaintiff prays to allow the application.

7. On the other hand the defendants have filed objection to the IA No.I. In the objection defendants stated that application filed by the plaintiff is not maintainable either in law or on facts. The application filed by the plaintiff is only intention to drag on the matter and also harass to the defendants. Further defendants submitted that the plaintiff has filed the suit against the defendants for the relief of declaration is O.S.No. 5/2019 in the suit the plaintiff has not sought any amendment. After the transfer the plaintiff has created a story and filed the application for amendment for grabbing the defendants property. If the Court

allow the application the entire nature of the suit will be change. Hence the question of amendment of the plaint is not arising. The plaintiff has filed false application and false affidavit and also he has not made any proper ground to allow the application. Hence, defendants prayed to dismiss the application.

8. Heard the arguments on IA No.I by both side and perused the documents.

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

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

2. What order?

10. 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

11. **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. In this regard counsel for plaintiff relied on the following decisions:

1. 2023(2) KCCR 1668 between Milaap Social Ventures India Pvt. Ltd., Bengaluru v/s Google India Pvt. Ltd., Bengaluru.
2. 2023(1) KCCR 1(SC) between Life Insurance corporation of India v/s Sanjeev Builders Private Limited and another.
3. 2023 SAR (Civ) 570 between Ganesh Prasad v/s Rajeshwar Prasad and others.

12. The principle laid down in the above citations aptly applicable to the case on hand. The proposed amendment will not change the nature of the suit. Plaintiff has presented the plaint after returning of the plaint by the Hon'ble Prl. Civil Judge and JMFC, Mudigere.

On 16/12/2022 defendants appeared through their counsel and sought time for filing written statement. In the present case the defendants have not yet filed any written statement before this court. Moreover, in the present case the evidence of plaintiff not yet commenced before this court. 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.

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

ORDER

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

**SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.**

**ORDERS ON I.A.NO.II FILED BY THE
PLAINTIFF U/O VII RULE 14(3) OF CPC**

I.A.No.II filed by the plaintiff U/o VII rule 14(3) of CPC to condone the delay in producing the list of documents.

2. On the other hand, defendants filed objection to IA No.II by denying all the averments made in the memo of facts annexed to the application.

3. Heard both side and perused the materials on record.

4. The following points arises for my consideration.

1) Whether the plaintiff has made out grounds to allow IA No. II?

2) What order?

Heard on IA No. II by both side.

5. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : As for the following:

REASONS

6. Point No. 1: It is submitted by the plaintiff that, he has filed this suit against the defendants for the relief of declaration, recovery of possession, for permanent injunction and for mesne profit.

7. Plaintiff contended that recently he has received certain documents from the previous owner of the suit schedule property i.e., S.K. Syed Arif Ahammed regarding registered sale deed executed by M.a. Noor Mohammed, S/o Late Hazi. B. Abbas and his wife B.M. Zohar Banu (defendant No.1) in favour of G.H Chandregowda and a registered agreement of sale executed by M.A. Noor Mahammed, S/o Late. B. Abbas agreeing to execute registered sale deed. The said document / registered sale agreement and other correspondence papers pertaining to the loan transactions are collected from Sri. S.K. Syed Areef Ahammed and the same are not produced to this Court. That the documents received from the Prl. Civil Judge and JMFC, Mudigere Court produced in O.S.No.

4/2019 are original documents pertaining to plaint schedule property are required to be produced to this Court.

8. The said documents are pertaining to plaint schedule property which will assist the Court for proper and effective adjudication of the controversy between the parties. If I.A. is allowed no hardship and injury would be caused to the defendants on the other hand if not allowed it would cause much hardship and legal injury to the plaintiff which cannot be compensated in any manner and the same may lead to multiplicity of the proceedings.

9. On the other hand, defendants have submitted objection to IA No.II. In the objection the defendants contended that the application filed by the plaintiff is not maintainable either in law or on facts. The application are for intention to harass to the defendants and also drag on the matter. False suit filed by the plaintiff against the defendant for declaration of the plaint schedule. The reasons stated in his affidavit are false faraway

from truth. The documents produced by the plaintiff are created. Those documents are not related to the suit hence those are not acceptable documents. If the application is allowed defendants will be put great hardship and injuries. Hence, defendants pray to dismiss the application.

10. On perusal of the records it reveals that, plaintiff has filed the suit for declaration and possession. When the matter is posted for filing of written statement by defendants, plaintiff has come up with present application for production of documents. It is the principle that widest opportunity should be given to the parties to prove their case in the trial court itself. If the IA No. II is allowed no hardship will be caused to the defendants. The defendants have every right to cross-examine the said documents produced by the plaintiff. Therefore, to avoid multiplicity of proceedings I inclined to allow the application filed by the plaintiff. In view of my above discussion I answer point No.1 in the Affirmative.

11. **Point No. 2:** In view of my findings on point No.1 I proceed to pass the following:

ORDER

IA No. II filed by the plaintiff U/o VII rule 14(3) is hereby allowed on costs of Rs.100/-.

The document annexed to the IA No. II is taken on record.

Case posted for amendment of plaint and to furnish amended plaint copy by 28/08/2023.

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