

IN THE COURT OF THE CIVIL JUDGE & JMFC.,
SRINGERI

PRESENT: Sri. Sachin.D. B.A.,LL.B.,
Civil Judge & JMFC.,
Sringeri.

DATED THIS THE 11th DAY OF NOVEMBER 2021

ORIGINAL SUIT NO:16/2016

BETWEEN :

Mr. Mohammed Yousuff
S/o Late Peeru Saheb.
Since dead, by his LR's

1(a). Smt Khairunnisa W/o Late Mohammed
Yousuff, Aged about 78 years,
R/o Bhaktampura, Sringeri Village,
Sringeri Taluk and others. *... Plaintiffs*

(By Sri. K.R.Suresh, Adv..)

AND :

1. Smt.Haneefabi W/o Late Ibrahim Saheb,
Since dead by LRs

1(a). Smt.Shakilabi W/o Late Sheikh Ahmed,
Aged about 55 years, R/o: Kinikini
Hemmane, (Masidi Gudde), Sringeri Village,
Sringeri Taluk and others.

...Defendants

***(D1(a) to D1(h) By Sri. V.R.N, Adv.,
D2, 4 to 7 By Sri.H.R.U, Adv., D8
to 14 placed Exparte, D3(a) to 3(d)
By Sri. P.K., Adv.,)***

ORDERS ON I.A.NO.11

The plaintiff have filed the present application under order 6 rule 17 read with section 151 of C.P.C seeking an order of this court to amend the plaint as made mention in the application.

2. In the affidavit annexed to the application the plaintiff No.1(b) has deposed that, he is the one of the legal heirs of the deceased plaintiff and now he came to know that by mistake measurement of the suit schedule property is not mentioned in the plaint schedule. It is further deposed that, he further learnt that western side boundary of the suit schedule property is also not correct. Further, the proposed amendment is only formal in nature and it is for correction of the description of subject matter of suit. Hence, it will change not the nature of suit nor introducing any new matter. It is further deposed that, if the application is allowed, no hardship will be caused to defendants and there is no intentional delay in filing the application. Accordingly prayed for allow the application and permit them to amend the plaint as made mention in application.

3. The above application of the plaintiffs has been resisted by the defendants by filing objection statements. Wherein they have contended that, the application filed by the plaintiffs highly belated one and as such, it is not maintainable under the Limitation Act. It is further contended that, the plaintiffs have made the present

application after filing the written statement and commencement of plaintiff evidence with a mala-fide intention to protract the proceedings. Further, the proposed amendment brings new cause of action for the suit and it will also change the nature of suit. It is further contended that, the plaintiffs intentionally have not mentioned the survey number of suit property, its measurement and the boundary in suit as well as in the application and affidavit. Further, it is contended that the suit property originally belongs to one Ibrahim Saheb, who is the grand father of the defendant No.3(b) and 3(d) and uncle of the defendant No.3(a). But the plaintiffs suppressed the said facts and filed the present application for amendment. It is further contended that, neither the deceased plaintiff nor his LR's are having any right, interest and title over the suit schedule property. They have entered their name by colluding with the panchayath officials and as such, the plaintiff are not having any rights over the suit schedule property. It is further contended that, the plaintiffs have created the false cause of action and filed suit with respect to the property with having any right. Therefore, the application is not maintainable. It is further contended that, at the time of institution of suit the plaintiff has not mentioned the measurement of the suit property and after lapse of 5 years from the date of the suit, the present application is filed to insertion the measurement of the suit property. Therefore, the application filed by the plaintiffs is highly belated one

and it is not maintainable. Accordingly, prayed for dismiss the application of the plaintiff with costs.

4. In view of the above rival contentions of the both parties, the following points for arise for consideration.

1. Whether the plaintiffs have made sufficient grounds to allow the present application at this stage ?

2. What order ?

5. Having heard both side, court scrutinized the application, affidavit, objection statements and other materials made available on record. Now, the findings of the court to the above points as follows;

Point No.1 : In the Affirmative

Point No.2 : As per the final order

for the following

REASONS

6. Point No.1 : The deceased plaintiff has filed the present suit for the relief of partition and separate possession with respect to the suit property and also claimed the mesne profits from the date of death of the plaintiff's mother. The legal heirs of the deceased plaintiff when the case set-down for the cross examination of the PW1, have moved the present application for amend the plaint as made mention in the application. Having perusal of

the application, it is evident that, the proposed amendment is with respect to insertion of measurement of the suit schedule site and house situated therein and also for correction of the western side boundary of the suit schedule property.

7. It is the contention of the plaintiff that now they came to know about that the measurement of suit schedule property has not been maintained by mistake and they learnt that the western side boundary of the suit schedule property is wrongly stated the schedule of the plaint and same has to be rectified. The defendants have opposed the present application of the plaintiffs by filing the objection statements. Wherein they have raised the several contentions. Among them one of the contentions is that, the plaintiffs have filed the present application after the lapse of 5 years from the date of suit and that too without mentioning the survey number of property and as such, it is not maintainable. It is apparent that while institution of the suit the plaintiff has mentioned the assessment number of suit schedule property and he has not stated anything about measurement either in plaint averments or in schedule of the plaint. Now, plaintiffs are going to add the measurement of the suit schedule property in schedule of the plaint. The measurement of the suit schedule property is very important in every suit filed by the any parties. Hence, in order to adjudicate the real questions in controversy between the parties, the proposed amendment is just and proper.

Though the defendants have contended that the plaintiff are not having any rights over the suit schedule property and there is no supportive documents with respect to the proposed amendment i.e., measurement of suit schedule property, the said contentions cannot be decided while disposing the present application. It is pertinent to that, the party who alleged any fact has to be prove the same by producing the cogent evidence. Hence, mere allowing the proposed amendment will not amount to conclusive proof. On the other hand, the plaintiff will get the responsibility to prove said facts. Even though the plaintiffs have filed the present application after lapse of 5 years from the date of suit, its appears that the proposed amendment is just and necessary for adjudication of the matter in dispute between the parties. Thus, aforesaid contentions of the defendants are not sustainable at all.

8. It is another contentions of the defendants that, the proposed amendments brings new case and change the nature of the suit and as such, it is not permissible under the law. Proposed amendments is with respect to the insertion of measurement of the suit schedule property and correction of western side boundary. If the proposed amendment is allowed, it will not effect to the nature of suit and the suit filed by the plaintiff will be continue as suit for partition and separate possession. Further, the plaintiff are not withdrawing any plaint averments which they have already pleaded and they have also not inserting any para in

plaintiff pleadings. Thus, introducing new case by the plaintiff through the proposed amendment as contended by the defendants does not arise at all.

9. Admittedly, that the plaintiffs have filed the present application amendment when the case is set down for cross examination of PW1. It is well settled law that the date of settlement of issues be treated as the date of commencement of trial. Herein this case also the issues were settled on 10.07.2018 and additional issues were also framed on 05.03.2021. Further, the plaintiff No.1(b) also examined as PW1 by filing his examination in chief affidavit on 18.03.2021. Therefore the evidence has been also ready commenced. However, in the true sense evidence has yet be commenced. Because, though the PW1 examined by filing his examination in chief affidavit, the cross examination has not conducted till today. Therefore, it can be consider that the plaintiff has filed the present application before commencement of evidence. As such, liberal approach has be consider with respect to the proposed amendment.

10. It is pertinent to note that, if the proposed amendment is allowed and plaintiffs permitted to amend the plaint as made mention in the application, no hardship will be caused to the defendants. On the other hand, they will get an opportunity for filing additional written statement and contest the case. But, if the application is rejected, then the plaintiff may fails to prove their case as they put forth.

However, the inconvenience caused to the defendants may to compensate in terms of costs. Therefore the plaintiffs have made out sufficient grounds to allow the present application. Accordingly, this court answer the point No.1 **in the affirmative.**

11.Point No.2: In view of the above findings on point No.1, this court proceed to pass following:

ORDER

The I.A.No.11 filed by the plaintiffs under order 6 rule 17 R/w section 151 of CPC is hereby allowed on costs of Rs 500/-.

Consequently, the plaintiffs are permitted to amend the plaint as made mentioned in application within 14 days from the date of this order.

(Directly dictated to the Stenographer, transcribed by him, corrected and then pronounced by me in the open court on this the 11th day of NOVEMBER 2021, at Sringeri)

Sd/-

(Sri.Sachin.D)

Civil Judge & JMFC.,
Sringeri.

