

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present : Sri RAMAMURTHY N. B.A., LL.B.,
Addl. Civil Judge & JMFC. Tarikere.

O.S.No.150/2014

Dated: 29th day of January 2021.

Plaintiff : H.T.Ravikumar
(Reptd. By : Sri T.K.N., Advocate)

-Vs-

Defendants : Gowdara Suresha and others
(Reptd. By : Sri R.S./K.L.R., Advocate)

I.A.No.7

Applicant in I.A/: H.T.Ravikumar
plaintiff

-Vs-

Opponent in IA: Gowdara Suresha and others
Defendants

ORDER ON I.A.NO.7

The counsel for plaintiff/applicant has filed I.A.No.7. U/O.6 Rule 17 R/W. Sec.151 of CPC seeking permission to amend the plaint as stated in the I.A.

2. In the annexed affidavit, it is stated that, during pendency of the suit, the defendants have trespassed into the suit properties on 20/10/2019 and attempted to change the topography of the suit properties. The defendants removed 60 arecanut plants planted in single line over northern side of the plaint schedule properties. The defendants also broke the stone pillars of the fence and put mud

after removing the arecanut plants, so as to create impression of road being existed over suit schedule property. Hence, he has filed application for amendment of plaint. He could not file this application earlier due to covid-19 pandemic.

3. The proposed amendment will not change the nature of case. The incident happened subsequent of filing suit. The proposed amendment is necessary one as the defendants attempted to alter the topography of the suit properties, if application is not allowed, he will be put to irreparable loss and untold hardship and injury. If it is allowed, no prejudice will be caused to the other side. Hence, prays for allow the I.A.

4. This application is resisted by the defendants by filing objection to I.A. and stated that, the I.A. is not maintainable either in law or in facts. The plaintiff has filed I.A. after lapse of more than 6 years at belated stage. The alleged incident was took place about 5 years back. On that stage no application was moved by the plaintiff to show the alleged incident. The plaintiff has not produced any photos in support of alleged incident. The applicant has filed criminal case against defendant on false incident to Ajjampura Police. The police have not registered the case. The plaintiff filed a PCR against defendants. After trial of said case, it was ended with acquittal.

5. In the suit schedule property, there was an existing of road from time immemorial. The said road was used by the all villagers and surrounding villagers of Kanabagatte village for transporting agricultural produces. The said fact considered by this court and granted temporary injunction in favour of defendants. The said order was questioned before Hon'ble Senior Civil Judge Tarikere, same was dismissed and no writ was filed by the plaintiff. The proposed amendment are imaginary and got up one. The averments of the affidavit filed by the plaintiff is false. Hence, prayed for dismiss the I.A.

6. Heard both side and perused the materials in file.

7. The following points arises for consideration:-

-.POINTS:-

- 1. Whether the plaintiff has made out sufficient ground to allow the I.A. ?**
- 2. What order?**

8. Findings to the above points are as under:-

Point No.1 : In the affirmative

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

:-REASONS:-

9. Point No.1 :-The plaintiff has filed present I.A. seeking permission to amend the plaint as stated in the I.A. According to plaintiff/applicant during pendency of the suit, the defendants have trespassed in the suit schedule property and removed the 60 arecanut plants and stone pillars and put the mud after removing the arecanut plants. The incident was happened during the pendency of the suit. Hence, the proposed amendment in the plaint is necessary. According to defendants, the incident was took place 5 years back, the plaintiff has lodged complaint through PCR in respect of incident. After trial, the case is ended with acquittal. Therefore, the proposed amendment sought in the I.A. is imaginary one.

10. It is relevant to note that, according to order 6 Rule 17 of CPC, the court may at any stage of the proceedings allowed either party to alter or amend his pleadings in such a manner and on such terms as may be just. proveded that, No application for amendment should be allowed after the trial has commenced unless the court comes to conclusion that, in-spote of due deligency the party could not have raised the matter for which amendment is sought before the commencement of trial.

11. In support of his contention, the counsel for plaintiff has coated decision of the **Hon'ble Supreme Court in the case of Rajesh Kumar Agarval V/s. K.K.Modi** and others. The highlited portion of the judgment reads as follows:-

(I) Civil Procedure Code, 1908-Order VI, Rule 17 R/w. 151-Amendment of Plaint-Primary duty of court to decide whether such an amendment is necessary to decide the real dispute between the parties-Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice-While considering an application for amendment, the court should not go into the correctness or falsity of the case in the amendment-The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of jusitce-Merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment.

12. According to above observations of the Hon'ble Supreme Court, the amendment of pleading should be liberally allowed since procedural abstacles ought not to implead dispensation of justice and merit of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of along prayer for amendment.

13. The stage of the present case is for plaintiff evidence, the trial is not yet commenced. Hence by considering the provision under order 6 Rule 17 and observations of the Hon'ble Supreme Court and facts and circumstances of the case, opinion of this court is that, it is just and proper to allow the I.A filed by the plaintiff/applicant for amendment of pleadings as sought for by imposing reasonable cost in the interest of justice. Therefore, opinion of this court is that, the applicant is made out grounds for allow the I.A. Accordingly, this court answered point No.1 in the affirmative.

14. **Point No.2 :-** As per the above reasons and answer given to the point No.1, this court proceed to pass the following:-

-:ORDER:-

The I.A.No.7 filed U/O.6 Rule 17 R/W. 151 of C.P.C. filed by the plaintiff is hereby allowed on cost of Rs 200/-.

For carryout necessary amendment and furnish amended plaint.

Sd/-
(RAMAMURTHY N.)
ADDL.CIVIL JUDGE & J.M.F.C.,
TARIKERE.