

KACM710013262012



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.

Dated: 2nd Day of February 2022.

O.S.288/2012

Plaintiff: T.V. Manjunatha.

VERSUS

Defendant: Narayana & others

ORDER ON I.A.NO.XXI FILED U/O VI RULE 16 and 17
R/W SECTION 151 OF CPC.

The plaintiff has filed present I.A., seeking permission to amend the plaint in para No.5 after word encroached '2½' may be deleted and add the measurement as '4½' and in the plaint 'B' schedule the measurement shown as '4' may be deleted and add the measurement as '4½' as stated in the I.A.

2. In the annexed affidavit, the plaintiff has stated that, he has filed the suit for declaration and recovery of possession in respect of plaint 'B' schedule property. During pendency of the suit, the defendants have encroached some

portion of plaint schedule property. Hence, he has approached to appoint the court commissioner to measure and locate the encroachment of the defendants. The court commissioner has submitted his report with sketch. In the report it is stated that, the defendants No.1 and 2 have encroached 03 and 1½ guntas, in total 4½ guntas. Then only he came to know that, he was in possession of plaint 'A' schedule property to the extent of 1½ guntas and remaining 4½ guntas of land encroached by the defendants. Hence, it is just and necessary to amend his plaint schedule seeking relief of delivery of possession of 4½ guntas of land. The proposed amendment will not alter the nature of suit and cause of action. If I.A., is not allowed, he will be put to great hardship. Hence, prays for allow the I.A.

3. On other hand, the defendants have objected the present I.A., stating that the I.A., filed by the plaintiff is not maintainable either in law or on facts. Already the evidence of both parties completed and stage of the case is for arguments. At this stage, the I.A., filed for amendment of the plaint on the basis of survey sketch is not maintainable, as already evidence of surveyor also completed. The sketch issued by the surveyor is not correct. There is no encroachment stated in the said sketch. Hence, prays for reject the I.A.

4. Heard arguments of both counsels and perused the materials in file.

5. The following Points that arise for consideration are :

1) **Whether the plaintiff has made out sufficient ground allow the I.A.?**

2) **What order?**

6. My findings on the above points are as follows:-

Point No.1 : In the Affirmative,

Point No.2 : As per the order,

for the following:

REASONS

7. **POINT NO.1:** The plaintiff has filed present I.A., seeking permission to amend the plaint and schedule as stated in the I.A. According to him, during pendency of the suit, the defendants have encroached some portion of the suit property. Hence, the surveyor is appointed to measure the encroachment. After measurement and report submitted by the surveyor, he came to know that the defendants have encroached 4½ guntas in his property. Upon perusal of plaint averments, the plaintiff has sought the relief of recovery of possession of 'B' schedule property measuring 4 guntas. In the present I.A., he has sought for amendment of said measurement of 4½ guntas.

8. According to Order 6 Rule 17 of CPC, at any stage of the suit, the parties can amend their pleadings before commencement of the trial. In the present suit, already trial was commenced and evidence of both parties completed. As per contention of the plaintiff, during trial, after measurement of the suit property by the surveyor, he came to know the encroachment of 4½ guntas of land. The materials on record shows that, the court commissioner surveyor is appointed after commencement of trial and he has filed his report after measurement work. Hence, the facts of present I.A., came to known to plaintiff after commencement of the trial. Such circumstances, opinion of this court is that, it is just and proper to permit the plaintiff to amend his plaint to avoid multiplicity of proceedings in the interest of justice. Hence I.A filed by the plaintiff is liable to allowed on reasonable cost. Therefore, this court answered Point No.1 in the Affirmative.

9. **POINT NO.2** : For the above reasons and answer given to the Point No.1, this court proceed to pass the following :

ORDER

I.A.No.XXI filed by the plaintiff under Order VI Rule 17 r/w Section 151 of CPC is allowed on cost of Rs.200/-.

The plaintiff is directed to carry out necessary amendment and furnish amended plaint by 16.02.2022.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the day of 2nd day of February 2022.)

Sd/-

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