

ORDERS ON I.A. No.VII FILED U/O 6 RULE 17 of CPC.

The Plaintiff has filed application U/O 6 Rule 17 to amend the plaint as per amendment schedule.

2. In support of the application the Plaintiff No.1 has filed the affidavit and stated that he has filed the above suit for mandatory Injunction against the Defendant. It is stated that in the application, at the time of filing the suit, defendant has constructed 6X7 feet sump and 5X6 feet concrete slab and additionally total 14X19.50 feet foundation in the suit schedule property and the same has not mentioned in the plaint and the said mistake are purely bonafide and it has to be mentioned in the plaint and as such the present Plaintiff has filed application. Accordingly, he prays to allow the application.

3. Per contra by Defendant has filed objection by denying the contents of affidavit. It is stated that the Plaintiff has shown falsely averements in the affidavit that defendant constructed 6X7 feet sump and 5X6 feet concrete slab and additionally total 14X19.50 feet foundation in the suit schedule property and in the sale deed, the measurement is not mentioned, Plaintiff has not stated any grounds to allow application and the Plaintiff has not proceeded the suit. It is stated that if the application is allowed, great hardship and loss will cause to the defendant. Accordingly the Defendant prays to dismiss the application.

4. Heard the arguments from counsel for Plaintiffs and defendant.

5. The points that would arise for consideration is:

1. Whether the plaintiffs prove that the amendment sought by the plaintiffs is just and necessary to decide the controversy between the parties?

2. What order?

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

Point No.1 : In the Affirmative

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

REASON

7. Point No.1: The Plaintiffs have filed this suit seeking the relief mandatory Injunction. Now the case stands posted for plaintiff evidence. It is contended by the Plaintiffs that at the time of filing the suit, defendant has constructed 6X7 feet sump and 5X6 feet concrete slab and additionally total 14X19.50 feet foundation in the suit schedule property and same has not been mentioned in the plaint and as such it is just and necessary for amend the plaint and as such the Plaintiffs have filed above application for amendment.

As per Order VI Rule 17 the court may at any stage of proceeding allow, either party to alter or amend his pleadings in such term as may be just and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties.

8. The proposed amendment will not affect to nature of the suit. Further, 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 the proceedings then such application has to be allowed and proposed amendment will not take away the rights accrued by the parties and proposed amendment is just and necessary to decide the controversy between the parties.

9. Admittedly, it is trial court. If application is not allowed the Plaintiffs will be put to great hardship and loss and it may cause multiplicity of proceedings, if application is allowed no hardship will be caused to the Defendant. Hence, this court feels that to avoid multiplicity of the proceedings and in the ends of justice, it is just and necessary to allow the I.A. Accordingly, I answer **point No.1 in Affirmative.**

10. Point No.2: For the aforesaid reasons, I proceed to pass the following:

ORDER

The I.A.No VII filed by the plaintiffs U/O 6 Rule 17 is hereby allowed. To carryout amendment and to furnish amended plaint, call on : 22.02.2023.

Addl. Civil Judge & JMFC.,
Gundlupet.