

ORDERS ON I.A. No.IV

This is an application filed by the plaintiff under Order 6 Rule 17 of CPC for seeking permission to amendment in the plaint, when the case is posted for hearing on I.A No. 1 at pre trial stage.

2. In the accompanying affidavit it is averred that the suit is filed for declaration, permanent injunction and mandatory injunction against the defendant. The plaintiff purchased the suit property under registered sale deed dated: 10.04.1968. At the time of filing the suit they have wrongly mentioned the particulars of boundaries of Northern and Southern side, which is interchanged by mistake. The particulars of northern boundary has been shown to the south and boundaries of southern side shown in the Northern side and visa-vis to as per the registered sale deed. But the subsequent document issued by Panchayath such as building license etc., depicts the correct boundaries to the Northern of suit property in 1968 the house of Shivappa was in existence and now it is in possession of his son Kalingappa and to the south the road is in existence. This clarification has not been narrated in the plaint. Hence, it is necessary for the plaintiff to clarify this fact by way of amendment. Therefore, prayed to amendment in plaint as mentioned in this application.

3. Upon providing sufficient opportunity to defendant since from 22.04.2021 has not filed any objection, Hence, this court on 25.03.2023 objection of defendant is taken as not filed.

4. Heard the arguments.

5. The points that arise for consideration is as follows:-

POINTS

1. Whether the proposed amendment is necessary for adjudication?
2. What order?

6. My Answers to the above points are as follows:-

Point No.1 : In the Affirmative

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

REASONS

7. This suit is filed for declaration permanent injunction and mandatory injunction based on the registered sale deed dated: 10.04.1968 by the plaintiff. So based on the boundaries now the plaintiff is seeking amendment to the plaint. In my opinion the prayer of the plaintiff is genuine and germinate. It is contention of the plaintiff that the proposed amendment is very much necessary for complete adjudication of the matter this application filed on 22.04.2021 itself as on the said date the evidence was not yet commenced and I.A No.1 is also pending for disposal.

8. Our Hon'ble High Court and Hon'ble Supreme Court of India laid down directions regarding amendment in pleadings in catena of cases and its settled in position. Whether the amendment is sought before commencement of trial the court is required very liberal in its approach. The court is required to bear in mind that the fact the opposite party which have a chance to meet the case set up in amendment. Equally whether the amendment is necessary for the court effectively adjudication of the main

issues in controversy between the parties. The amendment should be allowed to avoid multiplicity of proceedings. The defendant also have an opportunity to file amended written statement.

9. According to the court the proposed amendment is very much necessary for adjudication and no injustice will cause to other side. Accordingly, the **point No.1** under reference is answered in the **Affirmative.**

10. Point No.2:- In the result, I proceed to pass the following;

ORDER

I. A. No.IV filed by the plaintiff under order 6 rule 17 is hereby allowed.

Plaintiff is hereby directed to carry out amendment and to furnish amended plaint.

Sd/-
II Addl Civil Judge & J.M.F.C.,
Channagiri.