

KADG220032462021



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI

-: PRESENT :-

Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.

Dated: This the 26th Day of August 2023.

O.S.No.195/2021

PLAINTIFF : Sri. Gurumurthappa
V/s

DEFENDANT : Smt. Haleshamma

I.A.NO.V

Applicant/Plaintiff : Sri. Gurumurthappa
V/s

Opponent/Defendant : Smt. Haleshamma

- 1. Provision under which the Under Order 6 Rule 17 application is filed of CPC**
- 2. Relief sought for Amendment of plaint**
- 3 Date on which the application 01.07.2023 is filed**

4. Number of the application	I.A.No.V
5. Date on which the objections are filed by different opponents	10.07.2023
6. The date on which the orders is passed	26.08.2023

ORDER ON I.A.NO.V

Plaintiff filed I.A.No.5 under Order 6 Rule 17 of CPC seeking for permission to amend the plaint as per the schedule given under the application.

2. SOME AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

The plaintiff has sworn the affidavit and stated in it that, at Para No.8 of the plaint, he pleaded the fact of the situation of the suit schedule house as is constructed in the landed property. Also pleaded the fact that, himself and his brothers, cousins have constructed the residential house in row from West to East. However, by inadvertence mistake, at the time of filing of the suit he had not pleaded the particulars of the land in which the houses were constructed and also the particulars of the person constructed the houses.

3. In order to clarify the same, the plaintiff intends to include the particulars of landed property and also the persons who constructed the houses, which gives the clarity of suit property and it's adjacent property. If the application is allowed

no change will be taken place in nature of suit and the cause of action. Thus, the plaintiff prays to allow the application.

4. STATEMENT OF OBJECTIONS FILED BY THE DEFENDANT AS UNDER:

The application is after thought and it is filed at belated stage of final arguments. The suit property is in Sy.No.86/1 belongs to the father of defendant. The proposed amendment would place new plea and to coop the lacunas. It also the desire of the plaintiff to grab the property of defendant. The plaintiff is claiming that, his father, father of defendant and others have got share in Sy.No.86/1, then in such event, certainly the suit for partition would lay and not the suit of this kind. The plaintiff is not at all the exclusive owner of the property. The identity and the measurement of the property is not with reference to the documentary evidence. By these set up contentions, the defendant prays to reject the application.

5. On the basis of application and objections, following points arises for my consideration:

POINTS

1. Whether the plaintiff has made out grounds that, in spite of due diligence he could not has brought the proposed amendment?

2. What Order?

6. Heard the learned counsels appearing for the plaintiff and the defendant. Perused the materials placed on record and my answer to above points as under:

POINTS

POINT NO.1 : In the Affirmative,

POINT NO.2 : As per final order for the following:

REASONS

7. **Point No.1:-** At the outset, plaintiff has approached this court for the relief of ejectment of the suit schedule property and also vacant possession at the hands of defendant. The plaintiff has also claimed an amount of Rs.14,500/- from the defendant and also the cost of suit. The plaintiff's bone of contention to claim the possession can be gathered from the pleadings that, he constructed the residential building in schedule property and was residing thereat till the end of 2009. Thenceforth, he shifted the residence at Lingapura and had kept vacant the suit property. The defendant is the cousin sister of plaintiff and she married to one Thippeshappa, both were residing at Arasinagatta Village by putting thatched hut by the side of Davanagere - Channagiri Road. During the year 2010, the defendant requested the plaintiff to occupy the suit schedule property on monthly rent of Rs.500/- with certain

agreements for its enjoyment. Since the month of March 2019, defendant was being defaulted in paying the rentals to the plaintiff assigning her financial problems. Having taken sufficient time she failed to clear off the rental dues.

8. The plaintiff is having two sons and got landed properties at Arasinagatta Village. In order to have proper accommodation of his family to look after the landed property situated in the said village, directed the defendant to vacate suit property in the month of January 2021. When the plaintiff not heeded for the oral request, he placed legal notice dt: 23.02.2021, terminating her tenancy from the midnight of 31.03.2021 and also instructed her to vacate and handover the possession of suit schedule property on 01.04.2021. Which was served upon, the defendant on 01.03.2021 and inspite of it, she failed to comply, but she replied with false allegation that there is no such jural relationship. The plaintiff has also stated the situation of road row houses from East to West in the landed property. Thus, the plaintiff prays to decree the suit.

9. In order to contest the claim of plaintiff, the defendant filed the written statement and denied the alleged relationship as landlord and tenant including creation of tenancy, termination of tenancy through alleged notice. The defendant set up title in suit schedule property. The Sy.No.86/1 belongs to

her father and in which, the suit schedule property is situated. The defendant also denied the source of title of plaintiff to suit property and contended that, the claim of plaintiff is absolutely imaginary and creation for the purpose of this suit.

10. Having taken note of the pleadings, I have also heard both the learned counsels for plaintiff and defendant. The learned counsel for plaintiff has vehemently argued that, the plaintiff has given particulars regarding the existence of properties in the landed property which was referred by the defendant in reply to legal notice. However, has left certain facts to incorporate in the pleadings by inadvertence mistake. The proposed amendments are absolutely explanatory in nature and no such changes will be taken place in the cause of action as well as nature of the suit. Thus, he prays to allow the application.

11. The learned counsel for defendant has vehemently argued that, the landed property comprised under Sy.No.86/1 is belongs to the father of defendant and in which the suit schedule property is located. The defendant and her family members are in actual enjoyment and possession over the property comprised within the suit boundaries. Thus, the question of ejecting them without any lawful right by the plaintiff under this suit would not lay. The learned counsel for

defendant has also submitted that, the plaintiff has not explained due diligence in not bringing out the proposed amendments in the plaint at earliest. Thus, he submitted to dismiss the application.

12. Having due regards to the submissions of learned counsels for plaintiff and defendant, I have carefully perused the proposed contents of amendment sought under the application on hand. The plaintiff has stated that, row type houses were constructed in the Sy.No.86/1, from East to West and 4 houses were there. Out of, two were alienated by the father of defendant in favour of one Rudrappa S/o Halappa and Thimmappa S/o Ningamma. The father of defendant retained two houses on the Western side of Rudrappa and Gangadharappa's house. With these proposed pleadings, I have carefully perused and compared the pleadings which already on record at Page No.3, Para No.8 of the plaint. Whereunder, the similar fact has been stated by not explaining the survey number of the landed property and also the relativity of the houses situated thereon.

13. It is in this regard, I would like to take note of the cross examination conducted by the learned counsel for defendant for PW.1, on 22.11.2022. Wherein, at Para No.3, Page No.6, whatever the proposed amendment placed on record with this application has been suggested to the PW.1 and got admission

from him. Therefore, in my considered opinion the proposed amendment is absolutely explanatory to what is stated in the para No.8 of the plaint and it would not change either nature of the suit or the cause of action as is narrated in the plaint while presenting it. As regards the due diligence is concerned, the mistake bounds to happen and the plaintiff has stated in the affidavit that, due to mistake and inadvertence he could not place it on record at earlier point of time. It is well settled law that, the amendments, if would not affect the cardinal principles of the amendments of pleadings, certainly would be allowed to meet the ends of justice and equity, as also to avoid the mutation of litigations between the parties, who approaches the court. At the same time, it is also well settled law that, the other side has to be placed with adequate compensation. In the case on hand, as per the opinion of this court, if in case the application is allowed certainly the defendant would not be set in that place that, she would not be compensated and would not be placed his case with all available defences. As already noted above the explanation what is brought under the application and the pleadings what are mentioned in the para No.8 are absolutely in pursuance of the reply notice addressed by the defendant to the plaintiff. The defendant has every opportunity to contest the proposed pleadings by way of additional written statement. Moreover, the entire facts stated in the form of

amendment, is already put to PW-1 in cross examination. Under such circumstances, I am of the considered opinion, the proposed amendment needs to be taken into account and to meet the ends of justice and equity. Thus, the **point No.1** is held in the **Affirmative**.

14. **Point No.2**:- For the forgoing reasons, I proceed to pass the following:

ORDER

I.A.No.V filed U/O.6 Rule 17 of CPC is hereby allowed with cost of Rs.500/-.

Infurtherance, the plaintiff is permitted to carryout the amendment as per the schedule given in application.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and pronounced in the Open Court on this **26th day of August, 2023**)

Sd/-
(Shri. Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.