

26.02.2024

ORDER ON IA No.4

This is an application filed by the plaintiff under order VI Rule 17 and Sec.151 of CPC prays to permit her to amend the plaint as mentioned in the I.A.

2. In the affidavit it is stated that, there is a clerical mistake in the prayer column and in the schedule. In the prayer column “till the final disposal of the suit” is mentioned due to the clerical mistake and same has to be deleted. In the schedule due to clerical mistake 'B' schedule is not typed. In the item No.1 of the schedule property 94/3 is mentioned, whereas it should be 94/3 portion. Earlier 94/3 portion 0.05 acres has been plotted as 94/4 and in view of the cancellation of the plotting order, now 94/4 is cancelled and it is clubbed with 94/3. Total extent of 94/3 is 0.29 acres, out of which 0.24 acres is 'A' schedule property and 0.05 is 'B' schedule property. The proposed amendment is just and necessary to decide the suit on merits. Hence, the present application.

3. On the other hand, defendant No.2 has filed objection and opposed to allow the application. Further stated that, till this day no permission has been taken from the court by the plaintiff or K.B.Shivadatta to prosecute the case

on behalf of the plaintiff under Order III Rule 2 of CPC. Therefore, present application is not maintainable and same can neither be looked into for any purpose nor mistake can be rectified. The defendant No.2 is the absolute owner of 0.05 acres of land as clearly admitted by the plaintiff in her plaint. Such being the case, authorizing her GPA Holder to deal with 2nd defendant's property by falsely contending that she is the co-owner is totally unlawful. The plaintiff had stated the location of the said property in Eastern portion of Sy.No.94/3. Now, after the commission report the plaintiff wants to change the location as Northern portion. This fact itself makes it very clear that plaintiff has come up with false claim and trying to change the location of the 2nd defendant's land as per her convenience and benefit. The present application is opposed to the provisions of Karnataka Civil Rules of Practice. Hence, prays to dismiss the application with cost.

4. Heard argument on both sides.

5. Following points arise for my consideration:-

POINTS:-

1. Whether the plaintiff has made out reasonable grounds to allow the application?
2. What order?

6. Answer to the above points is as under;

Point No. 1 - In the **Affirmative**

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

REASONS

7. The plaintiff has filed this suit against the defendants for the relief of permanent injunction. When the case was posted for hearing on IA No.2, plaintiff has come up with this application prays to amend the plaint. Defendants have stating that application is not maintainable either law or on facts of the case. At this juncture this court has gone through the under Order VI Rule 17 it speaks about:-

The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

8. In this case trial is not completed, Plaintiff is seeking for amend the plaint as mentioned in the I.A. Even though case is posted for hearing on IA No.2, plaintiff has come up with

this application. At this juncture the Hon'ble has relied upon the judgment reported **in (2002) 7 SCC 559**, in the case of **SAMPATH KUMAR V/S AYYAKANNU AND ANOTHER** held as under:

"Order 6, Rule 17 of the CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just.

9. Another judgment reported in the Hon'ble Supreme Court in a decision reported in **2012 AIR SCW 5419** in the case of **ABDUL REHMAN AND ANOTHER v/s MOHD.RULDU AND OTHERS** at paragraphs 7 and 8 has held as follows:

"7. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. On perusal of the above cited decisions his lordship has clearly held that, the

parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and the courts have to be liberal in accepting the same and even his lordship has held that there no bar in amendment of plaint at any stage and court should not go into correctness or falsity of case for amendment and also lordship has held that the object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. If the IA is allowed no prejudice caused to the defendants. Hence, the amendment sought by the plaintiff is liable to be allowed. Accordingly, **point no.1 is answered in the Affirmative.**

11. **Point No.2:-** In the light of above discussions, this Court proceed to pass the following:-

ORDER

IA No.4 filed by the plaintiff under
Order VI Rule 17 and Sec.151 of CPC is
hereby allowed on cost of Rs.200/-.

OS No.21/2023

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

Call on **27.02.2024**

Sd/-

Civil Judge & JMFC,
Moodbidri