

OS 134/2021
Dt:26-07-2022

Order on application filed by the plaintiff
U/O 6 Rule 17 r/w Sec.151 of CPC

The plaintiff has filed I.A.No.6 under Order 6 Rule 17 r/w Sec.151 of CPC and prays to permit him to amend the plaint as mentioned in the I.A.

2. In the affidavit it is stated that, the plaintiff has filed amendment application as he came to know recently that is only after the 1st defendant's written statement that, he has purchased the Sy.no.78/11 dry 0.38 acres from Mrs. Alice D'Souza @ Alice Sequeira and others through Mr. Michael Sequeira as per G.P.A. dated 06.10.2011, but the 5th vendor has expired on

02.04.2012 in Mumbai of Maharashtra State. Apart from that, in the sale deed Mr. John Ronald Sequeira vendor no.6 in the sale deed dated 16.01.2021 which has been represented through their alleged agent Mr. Michael Sequeira on the basis of G.P.A. dated 16.04.2012. Mr. John Ronald Sequeira expired in Mumbai on 07.08.2016, so on the date of alleged sale deed on 16.01.2021, the above said persons are expired earlier than that date. Knowingly that the death, the above said Mr. Michael Sequeira has falsely represented mentioning that he is a power of attorney holder of the deceased persons. Therefore, the alleged sale deed dated 06.01.2021 is void ab-initio, so the 1st defendant has not able to get any right as per the alleged sale deed. The entire document relied and produced by the 1st defendant dated 16.01.2021 is void document. Hence, prays to allow the I.A.

3. On the other hand, the defendants have not filed objections. Hence, objection to this application taken as not filed.

4. On perusal of the plaint, the plaintiff has filed the suit for the relief of permanent prohibitory injunction and prays to restrain the defendants not to trespass into the suit schedule properties and not to do any illegal acts. But now he is seeking declaration against the defendants

stating that, sale deed dated 16.01.2021 is void ab-initio. The relief sought in the original plaint and I.A. is different. There is no cause of action to seek relief mentioned in the I.A.

5. At this juncture, *the question arises that:*
“The cardinal test for deciding an application for amendment is that:

(i) Whether the amendment is necessary for the determination of the real question in controversy?

(ii) Can the amendment be allowed without injustice to other side?

If the first condition is satisfied that the amendment is necessary to decide the “real controversy” between the parties, the amendment should be allowed. In other words, if there is no necessity to decide the “real controversy” between the parties, the amendment should not be allowed.

Like the first condition, the second condition is also equally important, according to which, no amendment will be allowed which will cause injustice to the opposite party. It is settled law that the amendment can be allowed if it can be made without injustice to the other side. But it is also a cardinal rule that *“there is no injustice if the other side can be compensated by costs.”*

The Court is relied upon the decision:

Rajesh Kumar Agarwal vs. K.K. Modi- AIR 2006 SC 1647. The Court has to primarily decide whether amendment is necessary for determining the controversy.

Another decision in **Alkapuri Co-operative Housing Society Ltd., vs Jayanthibhai Nagin Bhai – AIR 2009 SC 1948-** by amendment of plaint, the party cannot seek to alter the basic structure of the suit.

6. Another decision reported in **2021 SCC OnLine Del 4080 between Valo Authomtive Pvt. Ltd. V/s Sprint Cars Pvt. Ltd., and others in para No.10.**

“ Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bona fide or mala fide;

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if fresh suit on the amended claims would be barred by limitation on the date of application”

In this case, the plaintiff has sought for injunction against the defendants. Whether that sale deed is correct or not, it is not the subject matter of the suit. He has to prevent obstruction from the defendants, instead of that, he is seeking defendants sale deed is void ab-initio. The burden lies upon the plaintiff to prove his case and he has to be proved his possession over the suit schedule property. Hence, supra decisions are applicable to present case. The relief sought in the I.A. is not helpful to the plaintiff case and it is not helpful to determine the controversy between the parties. If the I.A. is allowed, the nature of the suit will change and it is not helpful to effective adjudication. Hence, the amendment

sought by plaintiff is liable to be rejected. Hence, this court proceed to pass the following:

ORDER

I.A.No.6 filed by the plaintiff under Order 6 Rule 17 R/w. Sec.151 of CPC is hereby rejected.

Call on: 15.09.2022.

Sd/-

Civil Judge & JMFC,
Moodbidri