

ORDER ON IA NO.3

IA. No.3 is filed by the applicant/ plaintiff U/O.6 Rule 17 R/w 151 of CPC seeking amendment of plaint by impleading the proposed amendment as under:

Amendment :

1. ವಾದಪತ್ರದ ಶೀರೋನಾಮೆಯಲ್ಲಿ 2 ನೇಯ ಪ್ರತಿವಾದಿಯ ಹೆಸರು ದುದೂಸಾಬ ಎನ್ನುವುದನ್ನು ತೆಗೆದು ಹಾಕಿ ಆ ಜಾಗೆಯಲ್ಲಿ ದುದ್ದೂಸಾಬ ಮತ್ತು ತಂದೆ ಹೆಸರು ಅಲ್ಲಾಸಾಬ ಎನ್ನುವುದನ್ನು ತೆಗೆದು ಹಾಕಿ ಅಲ್ಲಿ ಲಾಲಸಾಬ ಎಂದು ತಿದ್ದುಪಡಿ ಮಾಡಲು ಪರವಾನಿಗೆ ನೀಡಬೇಕು.

2. ವಾದಪತ್ರದ ಶೀರೋನಾಮೆಯಲ್ಲಿ 3 ನೇಯ ಪ್ರತಿವಾದಿಯ ತಂದೆಯ ಹೆಸರು ಅಲ್ಲಾಸಾಬ ಎನ್ನುವುದನ್ನು ತೆಗೆದು ಹಾಕಿ ಆ ಜಾಗೆಯಲ್ಲಿ ಲಾಲಸಾಬ ಎಂದು ತಿದ್ದುಪಡಿ ಮಾಡಲು ಪರವಾನಿಗೆ ನೀಡಬೇಕು.

3. ವಾದಪತ್ರದ ಖಂಡಿಕೆ ನಂ:5 ರ ನಂತರ ಈ ಕೆಳಗಿನ ಖಂಡಿಕೆಯನ್ನು 5 ಅ ಅಂತಾ ಸೇರಿಸಲು ಪರವಾನಿಗೆ ನೀಡಬೇಕು.

5 ಅ ಶ್ರೀ ಇಮಾಮಸಾಬ ಅಲ್ಲಾಸಾಬ ಮಿಶ್ರಿಕೊಟಿ ಈತನು ಪ್ರತಿವಾದಿ ನಂ:2 ಮತ್ತು 3 ನೇದವರ ಮುತ್ತಜ್ಜನಿದ್ದು, ಸದರಿ ಇಮಾಮಸಾಬ ಈತನು ಪೋತಿಯಾಗಿದ್ದು ಪ್ರತಿವಾದಿ 2 ಮತ್ತು 3 ಇವರನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ಪಕ್ಷಕಾರರನ್ನಾಗಿ ಮಾಡಿದ್ದು ಇರುತ್ತದೆ.

4. ವಾದಪತ್ರದ ಖಂಡಿಕೆ ನಂ:10(ಬ) ದ ನಂತರ ಈ ಕೆಳಗಿನ ಖಂಡಿಕೆಯನ್ನು 10(ಬ)i ಅಂತಾ ಸೇರಿಸಲು ಪರವಾನಿಗೆ ನೀಡಬೇಕು.

10(ಬ) ವಾದಿ ನಂ:1 ಇವರು ಕುಂದಗೋಳ ಪಟ್ಟಣದ ಸಿಟಿಎಸ್ ನಂ:1154, ಒಟ್ಟು ಕ್ಷೇತ್ರ 9 ಚೌ ಮಿ. ಇದರ ಪೈಕಿ ಪೂರ್ವ ಭಾಗದ 4.5 ಚೌ ಮಿ ಅಸ್ತಿಯ ಸಂಪೂರ್ಣ ಮಾಲೀಕರು ಇರುತ್ತಾರೆ ಅಂತಾ ಠರಾಯಿಸಬೇಕು. Hence prayed for allowing the present application.

2. Per contra counsel for defendant No.2 and 3 has filed detailed objections and prayed for dismissal of IA with exemplary costs.

3. Heard and perused.

4. The following points arise for this court's consideration.

**1) Whether the applicant/ plaintiff
has made out sufficient grounds for
allowing the present application?**

2) What Order?

5. This court findings on the above points for consideration are as under:

Point No.1: In the Affirmative.

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

REASONS

6. **Point No.1:** The present suit has been filed by the plaintiff against the defendants for the relief of mandatory injunction and recovery of possession. The present application has been filed by the applicant/ plaintiff seeking amendment of plaint by causing changes in the plaint as per the proposed amendment, the amendment sought for by the applicant/ plaintiff is with regard to wrong mentioning of the names of the concerned parties in the plaint and also seeking further relief of declaration for declaring that he is the absolute owner of property bearing CTS. No.1154 totally measuring 9 sq. meter and out of that towards eastern side measuring 4.5 sq. meters.

7. Per Contra, learned counsel for respondent/ defendant No.2 and 3 has filed detailed objections contended that the applicant/ plaintiff has sought for different reliefs in single application which is not tenable under law. Already plaintiff has entered the witnesses box and examined himself as PW.1. The evidence is commenced and there is a delay in filing the present application and the applications seeking amendment at this stage is not permissible under law. He has also contended that, if the present application is allowed it will change the nature of the suit and cause of action of the present suit. The present application has been filed by the applicant/ plaintiff only to drag on the matter without there being reasonable cause.

8. On carefully perusal of the plaint, the present suit has been filed by the applicant/ plaintiff for the relief of mandatory injunction along with recovery of possession alleging encroachment by the defendants. However, on carefully perusal of the present application and the affidavit annexed the said application it is clear that as per the relief of mandatory injunction plaintiff wants to amend his plaint with the further relief of declaration.

9. As per O.6 Rule 17 of CPC which reads as under:

Amendment of pleadings 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 just, and all such amendments shall be made as may be

necessary for the purpose of 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.

Such being the position of Law and presently if the said application is allowed the nature of case and cause of action does not change. Applicant/ plaintiff has to pay Court fee towards the relief of declaration. There is no bar to pray for relief of declaration in furtherance of a suit which has been filed only claiming consequential reliefs. However, the inconvenience caused to other side can be compensated by imposing reasonable costs. Hence, this court without further discussion, this point is answered accordingly.

10. Point No.2: As per the discussion above made. Hence, finding no sufficient grounds to allow the IA No.3. This court proceeds to pass the following:

ORDER

IA. No.3 filed by the applicant/ plaintiff U/o 6 Rule 17 R/w 151 of CPC is hereby allowed on cost of Rs.700/- payable to defendant No.2 and 3.

Further plaintiff is hereby directed to pay Court fee for the relief of declaration.

For amendment and APC call on:
26.07.2023.

Sd/-
(GAYATRI)
CIVIL JUDGE & JMFC.,
Kundgol