

Order on IA No.3

When the case is posted for objection to I.A.No.2, the plaintiff has filed I.A.No.3 Dated: 15.03.2024.

This is the application filed by the applicant/ plaintiff U/o 6 Rule 17 of CPC by praying to amend the plaint as stated in the application.

In the affidavit annexed to the application, it is stated that, plaintiff has filed the suit against the defendants for the relief of permanent injunction with respect to the suit schedule property. While filing the suit, plaintiff has mistakenly included unnecessary words in the pleadings and such inclusion is not malicious and proposed amendments are necessary to bring in the plaint. Hence, it is necessary to amend the plaint. If the application is allowed, nature of the suit and cause of action will not change. Hence, prayed to allow the application.

On the other hand the defendant has filed objections to the above application. In the objection statement stated that, the above application is not at all maintainable either in law or on facts of this case and facts stated in the application are all false. After filing written statement, filing of present application is not maintainable and Plaintiff has filed this application with the intention of harassing the defendant. There is no reasons in the affidavit and he has filed the suit by giving a false boundaries. Now the defendant filing the written statement, the plaintiff has brought an application for amendment of boundaries in the plaint. Hence, prayed to dismiss the application.

Heard and perused.

Points for consideration:

1.Whether the applicant has made out grounds to allow I.A.No.3 u/o 6 rule 17 of CPC?

2.What order?

Answer to the above points:

Point No.1 : In Affirmative

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

:: REASONS ::

Point No.1: I have already narrated the facts stated in the affidavit annexed to the application and objection filed by the defendants.

This is the application filed by the plaintiff to amend the plaint by inserting facts as stated in the application. By perusal of records, the plaintiff has filed this suit for seeking the relief of permanent injunction with respect to suit schedule property. The plaintiff has contended that, some facts are left out while preparing plaint and such facts are to be inserted in the plaint as they are necessary. The defendants have contended that, if the plaintiff is permitted to amend the plaint, nature of the suit and cause of action would change. By perusal of proposed amendments it appear that, the plaintiff has sought that, suit

schedule property was originally belonged to Thirumalegowda and boundaries are to be rectified. By perusal of sale deed dated 10-01-1943 it reveals that, Patel Kalegowda S/o Thirumalegowda had sold the property in favor of Shettygowda S/o Chikkegowda and Kengegowda S/o Kalegowda. Hence it is to be inserted Thirumalegowda instead of Mallegowda. But in order to show boundaries, the plaintiff has not produced before the court. In view of that, if the plaintiff is permitted to insert the boundaries in the plaint, burden of proof lies on the plaintiff to prove the facts stated in application under section 103 of Indian evidence act and if the application is allowed, boundaries are only changed, not nature of the suit and fundamental character would not affected of the suit and after trial it will know that, whether suit schedule property comes within the boundaries as stated by the plaintiff.

In the case of **Milaap Social ventures India Pvt Ltd and another Vs Google India Pvt Ltd in W.P**

No.6220/2022 (GM-CPC), wherein the Hon'ble High court of Karnataka has held that, **“proposed amendments should not be changed the fundamental character of the suit and amendment application should lean in favor of the plaintiffs and exercise judicial discretion and allow the all amendments and decide the matter on merits”**.

In view of the above decision of Hon'ble high court of karnataka, what the plaintiff is sought proposed amendments can be considered on merits and however the proposed amendments would not affect to fundamental character of the suit and nature of the suit and cause of action would not change. Hence the present application shall be construed liberally in view of the decision as stated above. Under these circumstances, **point No.1 is answered in the affirmative.**

Point No.2: I proceed to pass the following:

ORDER

I A No.3 filed by the plaintiff U/o 6 Rule 17 of CPC is hereby allowed on cost of Rs.200/-.

For compliance of cost and to carryout amendment and amended plaint by 22.03.2024.

II Addl. C J & JMFC.
Arkalgud.