

KAHS510002482012



Presented on : 26-04-2012
Registered on : 28-04-2012
I.A.No.VII filed on : 12-07-2017
I.A.No.VII Decided on : 10-02-2023
Duration : 5 years, 6 months, 29 days

IN THE COURT OF CIVIL JUDGE & JMFC,
AT: BELURU

Presided Over by Sri. PRASANNA KUMAR C., B.A.L, LL.B.,
Civil Judge & JMFC, Belur.

Dated this the 10th day of February, 2023

O.S./100/2012

Between:

Shri.Y.M.Thribuvan Sathwik

.... Plaintiff

(Shri. S.N.Lingesh, Advocate for plaintiff)

And:

Chief Secretary and others

.... Defendants

(By learned AGP)

Parties to the application I.A. No.VII

Applicant: Y.M.Mallesgowda

v/s

Respondents: Chief Secretary and others

Orders on I.A.No.VII

The present application (I.A.No.VII) is filed by the plaintiff on 12.07.2017 when the case was posted for hearing on preliminary issues in the pre-trial stage. Subsequently, the defendants have filed I.A.No.9 under Section 151 of Civil Procedure Code R/w Sec.20 of the Karnataka Land Grabbing Prohibition Act, 2011. Thereafter, this court had allowed the application by order dated 06-01-2018. Subsequently, the Hon'ble Registrar, KLGP, Special Court, Bangalore was pleased to return the records. Hence, the case was taken up for hearing.

2. The plaintiff has filed this I.A.No.7 under Order 6 Rule 17 of Civil Procedure Code seeking for amendment of plaint as under:

" ದಾವಾದ ಅನುಸೂಚಿ ಸ್ವತ್ತಿನ ಲಿಂಗಾಪುರ ಗ್ರಾಮದ ನಂತರ "ಅರೇಹಳ್ಳಿ ಗ್ರಾಮ ಪಂಚಾಯ್ತಿಗೆ ಸೇರಿದ ಗ್ರಾಮರಾಣಾ " ಎಂಬುದನ್ನು ಕೈಬಿಟ್ಟು " ಸರ್ವೆ ನಂ: 1/1 ರಲ್ಲಿ ಇರುವ ಜಮೀನಿನ " ಎಂಬುದಾಗಿ ಸೇರಿಸಬೇಕಾಗಿಯೂ "

3. In the affidavit filed in support of the application, the Power of Attorney Holder of plaintiff has contended that, by typographical error and oversight, the suit property is described as "Gramatana" property under Arehalli Grama Panchyath limits. But the same is land bearing Sy.No.1/1. Therefore, the plaintiff has filed the instant application to carry out amendment to that extent.

4. In the objection statement, the learned AGP appearing for the defendants has contended that the present application is illegal

and the amendment sought for would change the nature of the suit. The present application is filed only to drag on the proceedings of the suit. Hence, the defendants have sought for dismissal of the application as not maintainable.

5. Basing on the application, affidavit, objection statement, the following points would arise for consideration of this court.

POINTS

1. Whether the plaintiff has made out grounds for amendment of plaint as sought for?
 2. What order?
6. Heard arguments of both sides. On the basis of Application, affidavit, objection statement, plaint averments and also all the materials available on record, answer of this court 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. **Point No.1:** The present suit is filed by the plaintiff initially for the relief of declaration to declare that he is the owner of the suit property having perfected his title by way of adverse possession and for consequential relief of permanent injunction

against the defendants in respect of the suit property measuring 0.18 guntas of the Gramatana of Lingapura village, Arehalli Grama Panchayath, Belur Taluk. Subsequently, as per the memo filed by the plaintiff, he has restricted the relief only for the permanent injunction and withdrawn the declaratory relief as not pressed. As could be seen from the description of the suit property, there is no mentioning of Survey number, but the learned counsel for the plaintiff has contended that the suit property is situated in Sy.No.1/1. In this regard, this court has perused the documents and mainly the sale deed dated 21.03.2009 executed in favour of the plaintiff herein. Earlier the plaintiff had filed similar application to insert Sy.No.1/1, 1/2 and 1/5. But thereafter, he has got the said application withdrawn as not pressed. Now the plaintiff has come up with the instant application only to insert Sy.No.1/1 of Lingapura Village by deleting the location as Gramatana property within the limits of Arehalli Grama Panchayath.

8. In this case, though issues have been framed, the evidence is not yet commenced. The defendants have contended that the nature of the suit would change. However, the plaintiff is found to be intending to describe the suit property by assigning the survey number instead of Gramatana property. Whether the same is correct or not needs to be ascertained after holding full fledged trial. As of now, the plaintiff has made out the case as well as grounds required under Order 6 Rule 17 of Civil Procedure code

that he has exercised due diligence and filed this application for amendment in the pre-trial stage. Therefore, the present application is required to be allowed subject to proof regarding description of the suit property. Further the plaintiff has filed the instant application after lapse of 5 years from the date of the suit. Hence, reasonable cost is required to be imposed for allowing the application. Therefore, the instant application requires to be allowed. Accordingly, this court answer point No.1 in the **Affirmative.**

9. **Point No.2:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

ORDER

- I.A.No.VII filed by the plaintiff under Order 6 Rule 17 of Civil Procedure Code is hereby allowed on cost of Rs.400/-.
- The plaintiff is permitted to carry out the amendment as sought for in the application.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 10th day of February, 2023)

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.

(Order on I.A. No.VII signed and pronounced in the open court vide separate order)

ORDER

- I.A.No.VII filed by the plaintiff under Order 6 Rule 17 of Civil Procedure Code is hereby allowed on cost of Rs.400/-.
- The plaintiff is permitted to carry out the amendment as sought for in the application.
- For payment of costs and carry out amendment and amended plaint by : **09-03-2023.**

**(Prassana Kumar C.)
Civil Judge & JMFC, Belur.**