

ORDERS ON IA NO.III

The plaintiff has filed present application under Order 6 Rule 17 of CPC seeking to delete the word 'aunt (deceased) wife' in the Genealogical Tree at page No.2 of the plaint.

2. The defendants have filed objection to the aforesaid application.

3. Heard learned counsel for the plaintiff and defendants.

4. After perusal of materials on record, the following points would emerge for consideration:

- 1) Whether the plaintiff has made out grounds to allow the I.A.No.III?
- 2) What order?

5. My answer to the above points are as under:

Point No.1: In the Affirmative

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

REASONS

6. POINT No.1: In the affidavit appended to the application, the plaintiff has stated that she has filed present suit for partition and separate possession in respect of the suit schedule property against the defendants. It is contended that, at the time of filing of the suit, due to typographical error, she

mentioned in para No.2 in the Genealogical Tree as 'aunt (deceased) wife'. Therefore, it is very much necessary to delete the said word in the Genealogical Tree. If the proposed amendment is allowed, no loss or injustice will be caused to the defendants and nature of the suit will not be changed. Hence, the plaintiff prays to allow the I.A.No.III.

7. Per contra, the defendants have filed objections to the aforesaid application. In the objection, the defendants have denied application averments in material aspect. It is contended that, since the suit brought by the plaintiff is for partition and separate possession, it is not permissible for the plaintiff to amend the Genealogical Tree set out in the plaint. If the proposed amendment is allowed, nature of the suit will be changed. Further the plaintiff has not stated the reasons in the application, why she is amending the said word in the Genealogical Tree. Further, the plaintiff has not stated anything about how the said aunt is related to the plaintiff. Hence, the defendants prays to dismiss I.A.No.III with costs.

8. In view of the rival contentions put forth by both the parties, let me see whether the plaintiff has made out grounds to allow the I.A.No.5. Order 6 Rule 17 of CPC is reads as under:

“17. 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.”

9. The plaintiff has filed present suit for partition and separate possession in respect of the suit schedule property against the defendants. After issuance of summons by this court, the defendants have appeared through their counsels and filed written statement. Thereafter, the case is posted for plaintiff evidence. When the P.W.1 is examined and case is posted for further chief of P.W.1, the plaintiff has come up with present application seeking amendment of the word 'aunt (deceased) wife' in the Genealogical Tree. As per Order 6 Rule 17 of CPC, an amendment application can be allowed before commencement of trial. Further, if the party filed application after commencement of trial and shows the reason why he has not filed the application seeking amendment of plaint earlier to commencement of the trial, such application can be allowed subject to imposing suitable costs. In the case on hand, when the case is stands for further chief of P.W.1, the plaintiff has filed present application. Further the proposed amendment as prayed by the plaintiff is not changes the nature of the suit. It is to be noted that before allowing the application filed for amendment of pleadings, the

court has to taken into consideration of two aspects. One is whether the application is filed before the commencement of the trial and another one is whether the proposed amendment is changes the nature of the suit. Further, the court has to taken into consideration whether the plaintiff has made out sufficient grounds for not filling the application before commencement of trial and if the plaintiff shows sufficient reason for not bringing the application before commencement of trial, such application can be allowed by imposing suitable costs. In the case on hand, the plaintiff has shown reason in the affidavit appended to the application for not bringing the application in time. Further, the proposed amendment is not changes the nature of the suit. As such, this court is of the considered opinion that, the plaintiff has made out grounds to allow the I.A.No.III.

10. In this regard, this court has relied on the decision of the Hon'ble Supreme Court in the judgment reported in **2022 SCC Online SC 1128 in between Life Insurance of India V/s Sanjeev Builders Private Ltd., and another** wherein it is held that:

“ It is well settled that the Court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a

relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation”.

11. I have gone through the above judgment. The principle laid down in the above judgment is aptly applicable to the present case. Hence, for the reasons and discussions made supra, point No.1 is answered in the **Affirmative.**

12. Point No.2: For the foregoing reasons and discussions made supra, I proceed to pass the following:

ORDER

I.A.No.III filed by the plaintiff under Order 6 Rule 17 of CPC is hereby allowed.

The plaintiff is permitted to carry out amendment as prayed in I.A.No.III.

Call on:

(Nagendra)
Civil Judge & JMFC, Belur.

