

KAHS610035782019



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT CHANNARAYAPATNA**

PRESENT:- Sri. DEEPU B.C., B.A.L., LL.B.,
Prl. Civil Judge & JMFC,
Channarayapatna.

Dated this the 29th day of September 2023

O.S. NO.661/2019

Plaintiff/s : Lakshmegowda
S/o Late Banegowda
and others

V/s

Defendant/s : H.S. Manjegowda
S/o Shivalingegowda
and others

PARTIES TO I.A. No. 4

Applicant/s :- Lakshmegowda & others
(Plaintiffs)

V/s

Opponent/s :- H.S. Manjegowda and others
(Defendants)

ORDER ON I.A. No.4

The instant application is filed by the plaintiff U/o 6 Rule 17 CPC on 23-05-2023 seeking amendment to the directions shown in the rough sketch filed along with the plaint.

2. In support of the application affidavit is filed, wherein, the plaintiff No.1 has sworn to fact that he has filed the suit against the defendants for the relief of declaration of title and prohibitory permanent injunction. At the time of filing of the suit, due to oversight and inadvertence, the directions shown in the rough sketch filed along with the plaint was wrongly typed and such fact came to his knowledge recently. Hence it would require to permit the plaintiffs to rectify said mistake by way of amendment. The proposed amendment will not change the nature of the suit and does not take away the rights of the defendants, accordingly prayed to allow the application.

3. On the other hand, the defendant No.1 has filed objection on 15-06-2023 by denying the entire

averments made in the affidavit annexed to the application and contended that the plaintiffs have filed the false suit by suppressing the material facts. The reasons cited in the affidavit are false and concocted. During the course of cross-examination of P.W-1, some material facts are elicited. Now in order to overcome the lacuna of the plaintiffs, they have come up with this application. Hence, the application filed by the plaintiff is not maintainable, it is liable to be rejected.

4. Heard the arguments on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as under :

1. Whether the plaintiffs have made out sufficient grounds to allow them to amend their plaint as sought for ?

2. What order?

6. The answers to the above points are as here under:-

Point No. 1 :- **In the Affirmative**

Point No. 2 :- As per final order.

For the following :

:: REASONS ::

7. Point No.1 :- As could be seen from the record, the instant suit has been filed by the plaintiffs against the defendants for the relief of declaration of title and prohibitory permanent injunction in respect of suit schedule property. In response to the suit summons, the defendants have appeared and contested the case. After considering the rival pleadings of both the parties, issues have been framed, accordingly the plaintiff No.1 got examined himself as PW-1 and partly cross-examined by the counsel for the defendants and when the matter was posted for further cross-examination of PW-1, the plaintiffs have come up with this application.

8. As aforesaid, as per the plaintiffs, due to oversight and inadvertance, the directions shown in the rough sketch filed along with the plaint was wrongly typed, hence it needs to be rectified by way of amendment. But as per the defendants, since some material facts are elicited during course of cross examination of P.W-1, in order to overcome their lacuna,

the plaintiffs have come up this application and same is not maintainable.

9. As per proviso to rule 17 of order 6 CPC, no application for amendment shall be allowed after 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. Herein this case, as aforesaid trial has already been commenced, but the plaintiffs are required to show their due diligence for not making the application before commencement of trial.

10. The plaintiffs along with the plaint have filed hand written rough sketch, wherein the extent and boundaries the properties of the plaintiffs and defendants are shown. Now the plaintiffs have intends to amend all four directions as Eastern side as a Northern side, Western side as a Southern side, Northern side as a Western Side and Southern side as a Eastern side. During the course of cross-examination of P.W-1, though the counsel for the defendants has posed the question regarding the boundaries to plaintiffs' property, he did not ask any question regarding the rough sketch filed by the plaintiffs.

11. Since the plaintiffs have sought the declaration of title over suit property, they have to prove the same along with correct boundaries. If the plaintiffs are not allowed to amend their pleadings as sought for, they may be put irreparable injury, on the other hand, no injury would be caused to the defendants. Further the proposed amendment will not change the nature of suit and does not take away the rights of the defendants. So under these circumstances, merely the plaintiffs have come with application after commencement of trial, not a ground to reject their claim. Therefore, this court is of opinion that the plaintiffs have made out sufficient grounds to allow them to amend as sought for. Thus, point No.1 is answered in the '**Affirmative**'.

12. Point No. 2 : In the light of foregoing discussion, this court proceeds to pass the following:

ORDER

I.A.No.4 filed by the plaintiffs U/o.6
Rule 17 of CPC is hereby allowed on payment
of cost of Rs.200/-.

The plaintiff is permitted to amend
the rough sketch as sought for.

(Dictated to the steno, directly on computer and typed by her, corrected signed
& then pronounced by me in the open court on this **29th day of September 2023.**)

(Deepu B.C.)
Prl. C.J. & JMFC,
Channarayapatna.