

KAHS610038692018



**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 10th day of October 2023

O.S. NO.653/2018

Plaintiff/s : Bhagyamma,
W/o Ningegowda@Chandregowda

V/s

Defendant/s : B.H.Krishnegowda
S/o Late Honnegowda,
and another

PARTIES TO I.A. No. 6

Applicant/s :- Sharath B.C.,
S/o Ningegowda@Chandregowda
(GPA holder of Plaintiff)

V/s

Opponent/s :- B.H.Krishnegowda and another
(Defendants)

ORDER ON I.A. No.6

The instant application is filed by the GPA holder of the plaintiff U/o.6 Rule 17 CPC on 22-05-2023 seeking amendment to the plaint.

2. In support of the application affidavit is filed, wherein, the GPA holder of the plaintiff has sworn to fact that the plaintiff is his mother and she has filed this suit for the relief of declaration of title and prohibitory permanent injunction and due to her illiteracy, at the time of filing of the suit, the plaintiff has not given proper instruction to counsel to prepare the plaint, hence some mistakes crept in the plaint. Now he has secured some documents. Hence, it would require to rectify the mistake crept in the plaint averments. The proposed amendment will not change the nature of the suit and it will not create a new cause of action. If the application is not allowed, the plaintiff will be put irreparable loss and injury, accordingly, he prayed to allow the application.

3. On the other hand, the defendant No.1 has filed his objection on 01-09-2023 and the same is

adopted by the defendant No.2 also. The defendant No.1 & 2 have denied the entire averments made in the affidavit annexed to the application and contended that they have filed their written statement and this court has framed the issues and after evidence of the plaintiff, the GPA holder of the plaintiff has come up with this application to drag the proceedings. Hence, he is not entitled for any relief sought in the application. Accordingly, they prayed to be rejected the application.

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 GPA holder of the plaintiff has made out sufficient grounds to allow the application?

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 plaintiff against the defendants for the relief of declaration of title and prohibitory permanent injunction in respect of 25 guntas of land in Sy. No.50/1, 15 guntas in Sy.No.50/2 and 12 guntas in Sy.No.48/3. The defendants have entered appearance and contesting the case. The GPA holder of the plaintiff got examined himself as PW-1 and when the matter was posted for his further chief-examination of PW-1, he has come up with this application.

8. As per the GPA holder of the plaintiff, due to illiteracy and ignorance, at the time of filing of the suit, the plaintiff has not given proper instruction to prepare the plaint averments and due to that some mistakes crept in the averments of the plaint and it needs to be rectify by way of amendment. On the other hand, as per the defendants, the plaintiff has already examined as PW-1.

Only in order to drag on the proceedings, the GPA holder of the plaintiff has come up with this application.

9. On perusal of the proposed amendment, the GPA holder of the plaintiff is intends to change the boundaries in the suit property and also insert block number before the survey number. As per the plaintiff, the plaintiff's husband by name Ningegowda @ Chandregowda was granted 25 guntas of land in Sy. No.50/1, 15 guntas of land in Sy. No.50/2 and 12 guntas of land in Sy. No.48/3. In order substantiate her case, the plaintiff has produced the grant certificate at Ex.P-2, wherein it prima-facie appears that 25 guntas of land in Sy. No.50/1 and 15 guntas of land in Sy. No.50/2 are shown to be granted in favor of Ningegowda. But at the time of filing of the suit, the plaintiff has not inserted the block number. Though the plaintiff is intends to rectify the boundaries to the plaint schedule property, he did not place any piece of document before the court.

10. Admittedly, as per the proviso to rule 17 of order 6 CPC, after commencement of trial parties could not be allowed to amend their pleadings. But when the proposed amendment is appears to be necessary for adjudication of the matter in dispute, the court may

permit the parties to amend their pleadings even after commencement of trial. Herein, the preliminary burden is upon the plaintiff to prove her case by placing cogent evidence. The proposed amendment will not change the nature of the suit and also not take away the rights of the defendants. As aforesaid, the defendants have objected the application on ground of delay, but merely the plaintiff has come up with this application at belated stage, it is not a sole ground to reject the application when it is necessary for adjudication of the matter in dispute. Therefore, by considering the nature of the proposed amendment, this court is of humble opinion that the GPA holder of the plaintiff has made out sufficient grounds to allow him to amend as sought for. Thus, point No.1 is answered in the '**Affirmative**'.

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

ORDER

I.A.No.6 filed by the GPA holder of the plaintiff U/o.6 Rule 17 of CPC is hereby allowed on payment of cost of Rs.500/-.

The GPA holder of the plaintiff is permitted to amend the plaint 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 **10th day of October 2023.**)

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