

IN THE COURT OF CIVIL JUDGE AND JMFC
AT HOLENARASIPURA

Present:- Sri.R.Mahesha, B.A.L, LL.B,
Civil Judge and J.M.F.C,
Holenarasipura.

Dated this the 26th day of November, 2019

O.S.No.213/2014

Kalaiah : Plaintiff

(By Sri.M.E.S., Adv.,)

V/s

Swamy & others : Defendants

(By Sri.H.S.A., Adv.,)

ORDER ON IA No.VI

Kalaiah : Plaintiff

V/s

Swamy & others : Defendants

ORDER ON IA No.VI

The present application filed by the plaintiff U/o 6 Rule 17 of CPC for seeking permission to amend the plaint for the reasons stated in the IA.

2. In the annexed affidavit, the plaintiff submitted that, the suit filed for the relief of partition and separate possession. In the present plaintiff evidence completed and case set down for plaintiff side evidence.

At the time of filing the suit, plaintiff's father wrongly mentioned as Late Dollaiah @ Kodaiah instead of Kodaiah. In the written statement also wrongly mentioned the plaintiff's father name. On verification of revenue document, it is clear mentioned that Kodaiah. Hence he preferred the present application for amendment of plaintiff's father name. The proposed amendment will not change the nature of case nor the cause of action. The proposed amendment is very much necessary to prove the case. If the application is not allowed, the plaintiff will be put to more hardship. Hence prays for allowing the application.

3. The defendant filed objection to the said application. In the objection, the application is not maintainable either in law or facts of the case. The plaintiff already mentioned in the cause title as Doolaiah @ Kodaiah. But in the written statement the defendant denied the plaintiff is not son of Kodaiah. On 20/03/2015 the plaintiff earlier filed the similar application and objection also filed. But the plaintiff not press the same. The present suit filed 5 years back. Plaintiff is not having any right to seek amendment of father name as plaintiff's father name is Javariah @ Mori Javaraiah @ Annaiah. The plaintiff having right with said Javaraiah not Kodaiah. The father name of plaintiff and defendant are different. Hence prays to dismissal of application.

4. Heard argument from both side. Perused the records.

5. The points that would arise for my consideration are as follows.

1. Whether the proposed amendment is necessary for elucidating the controversy between parties?

2. What order?

6. My answer the above points are as follows.

Point No.1:- In the Negative

Point No.2:- As per the final orders
for the following reasons.

REASONS

7. **Point No.1:-** I have perused the entire record, its reveals that this suit filed in the year 2014 for the relief of partition and possession. After institution of suit, issued suit summons and defendants appeared before the court and filed written statement, issues also framed and case posted for trial. At this stage plaintiff filed application for seeking amendment of plaintiff's father name Kodaiah instead of Doolaiah on 20/03/2015. Other side objection also filed. When case posted for order on IA No.1, this court on verification plaintiff cause title plaintiff's father mentioned as Doolaiah @ Kodaiah. Hence case posted for clarification of IA No.1. After clarification, the plaintiff filed memo stating that 'not press' the IA No.1. Hence this court IA No.1 dismissed as not pressed on 8/12/2015. Thereafter the case posted plaintiff evidence. When case posted for defendant side evidence, the plaintiff preferred the present application.

8. In this above background it is pertinent to look into provision of law and decided law of Apex court. Before discuss about result of application

Order VI Rule 17 Reads as under:

Rule 17: Amendment of pleading: The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and no such terms as may be just, and all such amendments shall be made as may

be necessary for the purpose of determining the real question in controversy between the parties.

The above rule confers a very wide discretion on courts in the matter of amendment of pleading. As a general rule leave to amend will be granted so as to enable the real question in issues between parties to be raised in pleadings. Where amend will occasion no injury to the opposite party and can be sufficiently compensated for by lost or other terms to be imposed by the order.

9. In this regard I would like referred the Hon'ble Supreme Court decision reported in **Gangabai V/s Vijaykumar** has rightly observed "the power to allow the an amendment undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding but the exercise of such for reaching discretion any powers is government by judicial considerations and wide the discretion, grater ought to be the care and circumspection on the part of the court". Generally the following cases, leave to amend will be refusal by the court.

1) The amendment will be refused when amendment is not necessary for the purpose of determining the real question in controversy between parties.

2) leave to amend will be refused if it introduce a totally different, new and inconsistent case or charge the fundamental character of the suit or defence.

3) leave to amend will be refused where the effect of the proposed amendment is to take away from other side a legal right accrued in his favour.

4) Leave to amend will be refused where the application for amendment is not made in good faith.

10. In the present case as discussed supra. On perusal of rival submission of both parties, materials on record, plaint averments,

application and objection averment, it is clear the plaintiff seeking amendment of plaintiff's father as Kodaiah instead of Doolaiah. The defendant also strongly opposed to consider the IA. In the present case the defendant filed written statement. In the written statement also defendant denied the plaintiff's father and in the cross examination of PW.1, the defendant counsel raised objection regarding plaintiff's father. But PW.1 denied entire suggestion put forth. The plaintiff earlier seeks amendment of father name, but same is not pressed. Why he again filed the similar application and the reason stated in the application is not proper. The document produced by the plaintiff also clearly mentioned as Kodaiah. But why should 'not press' the earlier amendment application. The plaintiff is not made out proper reason to believe the contention. So from the above the proposed amendment is not necessary. It is well established principal of law that as per order 6 Rule 17 of CPC, any amendment to the pleadings is to be carried out before the commencement of trial and even inspite of any due diligence the amendment cannot be carried out before trial, they only the court can permit the amendment of pleadings. From the above reasons stated the present proposed amendment is not necessary. Moreover the present application filed very belated stage. The age of suit and facts and circumstances of the case, the present application does not involved any merits to consider at this stage. He filed this application at fag-end trial just with an intention to protract proceedings. Hence I answer the **Point No.1 in the Negative.**

11. **Point No.2:** For the aforesaid discussion, I proceed to pass the following.

::O R D E R::

**The applications/IA No.VI U/0 6 rule 17
of CPC filed by the plaintiff is hereby
dismissed.**

No order as to cost.

(Dictated to stenographer directly on computer and typed by her
revised and corrected by me then pronounced in the open court dated this
26th day of November, 2019)

(R.Mahesha)
Civil Judge and J.M.F.C,
Holenarasipura.