

ORDER ON IA NO.4

The counsel for the plaintiff has filed the present application under order 6 rule 17 of CPC seeking permission to amend the plaint as shown in the application by way of addition.

2. The brief facts of the case of the plaintiff's is as follows:-

It is stated in the affidavit that through over sight in page No.7 below the schedule"A" first line after the work measuring 4 Acres to be deleted and substituted by 5 Acres 12 Guntas. Hence in the interest of justice and equity to determine the real questions in controversy between the parties and to avoid the multiplicity of the suits, it is necessary to permit to amend the plaint as prayed for in the application. Therefore on other various grounds stated in the application have prayed for allowing the application.

3. The defendant's filed objection contending as under:-

The defendant has filed the objection to the application wherein he has denied the entire contents of the affidavit and also the application in the objection statement. It is contended that the application filed to the main intention to drag on the matter and harras the poor defendants. The plaintiff produced sale deed along with plaint wherein in page No.1 line No.9 its stated that grandfather of the plaintiff was cultivating the land measuring 2 Acres 35 guntas and sold the same for legal necessity with a permission of Tahasildar Badami. The plaintiff

obtained the temporary injunction in respect of 4 Acres land. The application filed the belated one hence this application is not maintainable in the eyes of law. The proposed amendment will change the nature of the suit. The plaintiff will be introduce the new subject to suit if the amendment is allowed then the defendant will be put to great and irreparable loss which cannot be compensated in terms of money or in kind. Hence on all these grounds prays for dismissal of the present application with heavy cost in the interest of justice.

4. Heard both counsel at length in great detail and perused the material available on record.

5. On the basis of the application and objection the following points that arise for my consideration are:

-::P O I N T S ::-

1. Whether the plaintiff/applicant has made out grounds for allowing the proposed amendment ?

2. What order?

6. My answers to the above points are as follows:-

Point No. 1 : In the Affirmative.

Point No. 2 : As per final order

For the following:

-:: R E A S O N S ::-

7. **Points No.1 :-** By virtue of proposed amendment the plaintiff is amend the plaint by way of addition. On perusal of the entire material available on record it clearly discloses that when the present case has been posted for plaintiff evidence at this stage the present application has been filed by the plaintiff

for the amendment. The suit is for the relief of Permanent Injunction with respect to the suit schedule property. And on perusal of the amendment it clearly discloses that the plaintiff is intending to amend the plaint in continuation of his case.

8. And on the other hand the defendant has denied the entire contents of the affidavit and also amendment shown in the application. The learned counsel for the defendant has vehemently argued that this application is after commencement of the trial and the defendant has intends to seek the substitution of the word in the schedule. And the proposed amendment will take away the valuable rights accrued in favour of the defendant.

9. This court has carefully gone through with the details of proposed amendment. And as already noticed the plaintiff intends to substitution of the word in the schedule of the plaint, which are in the considered opinion of the court that it does not amount to changing of nature of the suit and further the records shows that yet the trail has not been concluded.

10. It is well established principal of law that courts should take liberal approach in case of amendment after commencement of trail. It is obvious that, even after the commencement of trial, courts should be liberal in allowing the amendment to meet the ends of justice, to decide the question in controversy in question and to avoid multiplicity of proceedings. In the instant case also already noticed that the proposed amendment will not change the nature of the suit or cause of action. The proposed amendment cannot be rejected only on the ground that trial has already begun. Hence considering all these aspects this court is of the considered opinion that the application needs to be considered accordingly point No.1 is answered in the Affirmative.

11. **Point No.2:-** In view of the above said findings on point No.1 and considering the facts and circumstance of the case the court proceed to pass the following:-

-:: O R D E R ::-

The IA No.4 filed by the plaintiff U/o 6 rule 17 of CPC is hereby allowed on cost of Rs.200/-.

The plaintiff is permitted to amend the plaint as prayed in the application.

The plaintiff to carry out the amendment and to furnish the amended plaint.

Call on 18.03.2024.

Sd/-
Additional Civil Judge & JMFC
Badami