

**IN THE COURT OF CIVIL JUDGE AND JMFC,
SAKALESHPURA.**

**Present : Sri. Nagesh Patil., B.com., L.L.B.,
Civil Judge and JMFC.,
Sakaleshapura.**

ORIGINAL SUIT No.261 / 2018.
Dated this 17th day of June 2019

Parties to IA III

Applicant / Plaintiff : Sumathi W/o S. Shivakumar
Thontadarya, 39 years,
Halesantheveri, Sakaleshpura
town and taluk, Hassan district.

-V/s-

Opponent / Defendant : Somashekar S/o
Shivarudrappa, 55 years,
Halesantheveri, Sakaleshpura
town and taluk, Hassan district.

ORDERS ON I.A.No.III

Learned counsel for applicant filed this application under order 6 rule 17 of C.P.C for seeking amendment of plaint and to grant such other reliefs.

2. In support of the application the applicant sworn to an affidavit and stated that plaintiff has filed suit filed this suit for declaration and permanent injunction against the defendant. It is contended that while drafting the plaint in prayer column due t mistake of typewriter left to draft as deliver the possession. If application is allowed no loss would cause to the defendant if not much hardship would cause to the plaintiff which cannot be compensated in terms of money. Therefore it is just and

necessary to amend the plaint in this regard and accordingly prays for allow the application.

3. This application opposed by counsel for opponent contending this application is not maintainable either in law or on facts of this case. And this application is filed at the fag end of the suit only with an intention to drag on the proceedings and the suit is filed by the plaintiff for declaration and permanent injunction and if application is allowed the nature suit will be changed and the plaintiff is not permitted to amend the same and plaintiff with intend to pill up the lacuna filed this application and plaintiff has filed this application after filing the written statement by the defendant as such the amendment of sought is not permissible under law. Therefore he prays for dismiss the application.

4. Heard arguments from the both sides:-

5. The following points arise for my consideration: -

- 1) Whether the Applicant has made out any ground to allow the application?
- 2) What order?

6. On hearing the arguments and on perusal of the materials placed on record, my answer to:-

Point No. 1 :- In the Affirmative

Point No. 2 :- As per final order,

for the following :-

-:: REASONS ::-

7. Point No.1:- This application is filed by applicant In support of the application the applicant sworn to an affidavit and stated that plaintiff has filed suit filed this suit for declaration and permanent injunction against the defendant. It is contended that while drafting the plaint in prayer column due t mistake of typewriter left to draft as deliver the possession. If application is allowed no loss would cause to the defendant if not much hardship would cause to the plaintiff which cannot be compensated in terms of money. Therefore it is just and necessary to amend the plaint in this regard and accordingly prays for allow the application. On the other hand the application is opposed by counsel for opponent contending that this application is not maintainable either in law or on facts of this case. And this application is filed at the fag end of the suit only with an intention to drag on the proceedings and the suit is filed by the plaintiff for declaration and permanent injunction and if application is allowed the nature suit will be changed and the plaintiff is not permitted to amend the same and plaintiff with intend to pill up the lacuna filed this application and plaintiff has filed this application after filing the written statement by the defendant as such the amendment of sought is not permissible under law. Therefore he prays for dismiss the application.

8. On careful perusal of the pleadings and documents it reveals that the present suit is filed by the plaintiff against the defendant for declaration and permanent injunction. And if the proposed amendment is allowed it will not change the nature of the suit and cause of action. The said mistake is neither intentional nor deliberate one. The contention of the defendant is that after filing the written statement plaintiff has filed this application to fill up the lacuna without assigning proper reasons. And it is the discretion of the Court to allow the amendment after applying itself the judicial discretion. The proposed amendment is just and necessary to decide the real controversy between the parties and if the application is dismissed it amounts to multiplicity of proceedings in the better interest of both the parties it is just and necessary to allow the application. If the application is allowed no loss or injury would cause to the defendant on contrary it will assist this Hon'ble Court to arrive at the proper conclusion of the case and in view of above discussion. It is just and necessary to allow the application. **Accordingly I answer Point No:1 in the Affirmative.**

9. Point No.2 : In view of the aforesaid reasons, I proceed to pass the following:

ORDER

**I.A.No. III filed under Order 6 Rule 17 of
C.P.C by the applicant is here by allowed on
cost of Rs.200/-.**

For amendment and amended plaint.

(Dictated to the Stenographer transcribed by her, after corrections pronounced by me in the open court on 17th day of June 2019)

(Nagesh Patil)
Civil Judge and J.M.F.C.,
Sakaleshpura.