

O.S. 274/2016

ORDERS ON I.A.No.II.

The plaintiff has filed application U/o.6 Rule 17 r/w.151 of CPC., as I.A.No.II, seeking for an order to amend the plaint as described in the application.

2. In support of the application, plaintiff filed affidavit, submitted that, defendant on his appearance denied the ownership of plaintiff with respect to suit property in his written statement. Hence, he filed this application and it is just and necessary to claim the relief of declaration as he is the absolute owner and in possession of suit property. Therefore, he filed this application seeking an additional prayer of declaration as described in the application and also suitable correction in the body of the plaint to the tune of the relief claimed under application. Further, he submitted, he is ready to pay additional Court Fee. If application is allowed no hardship will be caused to defendants and if application is not allowed the plaintiff will be put to hardship. Hence, prays to allow the application.

3. The defendants filed the objections, submitted that, application is not maintainable

either in law or on facts. If application is allowed, the very nature and cause of action of this suit will be changed. Therefore, application is liable to be dismissed.

4. Heard the advocate for plaintiff and defendant, perused the records and application.

5. Upon hearing of the advocates and on perusal of records, this Court framed the following points for consideration:

1. **Whether the proposed amendment is just and necessary to the complete adjudication of this matter?**
2. **What order?**

My findings on the above points are in the affirmative for the following:

REASONS

6. **Point No.1** : The plaintiff filed this suit for the relief of permanent injunction, to restrain the defendant from alienating the suit property permanently. Property subjected to this suit is Plot No.47 carved out in RS.No.892/1. It is the case of the plaintiff that, defendant is the owner of adjacent property i.e., property No.892/D. Now, defendants claiming Plot No.47

belongs to him and proceeded to sell the same. Consequently, he filed this suit.

7. On appearance, defendant denied the ownership and possession of plaintiff over Plot No.47 and claimed that, it is a part of RS.No.892/D and he formed plots therein, and the property claimed by the plaintiff described in the schedule is Plot No.1 not the Plot No.47. When this being the defence of defendant, plaintiff has filed this application to convert this suit into declaration as he is the absolute owner of suit property and it is very much warranted. Earlier, he filed only suit for permanent injunction. When defendant seriously disputed the ownership of plaintiff and claims that, it is the property of defendant; it is incumbent upon the plaintiff to claim relief of declaration. As such, it is necessary to amend the plaint. The nature of amendment will not change the nature of suit or cause of action. It only changes the nature of relief. Further, this suit is still at the stage of hearing on I.A.No.1. Therefore, this Court is of the opinion that, amendment is needs to be allowed to meet the ends of justice and to decide the controversy between the parties effectually. Accordingly, I answer **point No.1 in the affirmative.**

8. Point No.2: for the above reasons I proceed to pass the following:

ORDER

Interlocutory application filed U/o. 6 Rule 17 r/w.151 of CPC., in IA.No.II is hereby allowed with cost of Rs.300/-.

Call on for amendment and amended plaint.

By : 19-01-2017

Prl. C.J.& 1st Addl. JMFC.,
Ranebennur.