

**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. Shreyansh Doddamani,**
B.Com., LL.B.,(spl)
Civil Judge and JMFC.,
Savanur.

ORIGINAL SUIT NO. 99/2017
Dated this 27th day of June, 2023

PLAINTIFF: Rekha W/o Ravi Hosalli,
Age : 30 years, Occ : Agriculture,
R/o : Huralikuppi, Tq : Savanur,
Dist : Haveri.

Vs

DEFENDANTS: Manjunath S/o Shivappa Hosalli,
Age : 47 years, Occ : Agriculture,
R/o : Huralikuppi, Tq : Savanur,
Dist : Haveri and another.

IA No.VII

Applicants: Rekha W/o Ravi Hosalli.
(Plaintiff)

Vs

Opponent: Manjunath S/o Shivappa Hosalli,
(Defendants) and another.

ORDER ON IA NO.VII

The Plaintiff has filed this application Under Order 6 Rule 17 of Code of Civil Procedure for seeking permission to carry out the amendment in the plaint.

2. IA is accompanied with memo of facts of plaintiffs counsel, wherein it is stated that suit is for permanent injunction, Plaintiff is the daughter in law of defendant No.1. She had filed partition suit in OS No.189/2010, same was allowed and this plaintiff was entitled 1/4th share. Accordingly, she filed FDP No.11/2014. But the defendants have been trying to alienate the suit property. Hence, she filed this suit for seeking permanent injunction restrained the defendants to alienate the suit properties. At the time of filing of the suit they left one of the house property. Therefore, they have filed this application to include the said property as suit property.

3. The defendants counsel has filed objections wherein stated that application is not maintainable. The plaintiffs filed this application to include the another property. But they have not disclosed the valuation of the suit property. Therefore, application is

not maintainable. The plaintiffs not disclosed the due diligence.
Hence, they prayed to reject the application.

4. Heard both the sides and perused the materials on record.

5. The following points arise for my consideration:

POINTS

- 1) Whether the proposed amendment is necessary to adjudicate the suit effectively?
- 2) Whether the plaintiffs explained the due diligence?
- 3) What order ?

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

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : As per final order for the following:

:-REASONS:-

7. Point No.1 & 2 :- The plaintiff has filed this application when it was posted for cross of PW.1.

8. The plaintiff filed this suit for bare injunction restraining the defendants from alienating the suit property till disposal of FDP. The plaintiff specifically contended that as per the preliminary decree in OS No.189/2010 the plaintiff has 1/4th share in the suit schedule property. The plaintiff wants to implead another house property which was also suit property in the OS No.189/2010. Hence, it is nothing but inclusion of another property as suit property. The plaintiffs can amend the plaint at any stage. But as per the proviso if he filed after commencement of trial he should explain due diligence. In the present case on hand the plaintiff has filed this application after commencement of trial. But trial not yet completed. The plaintiff not explained the due diligence properly. But stated that the defendants also trying to dispose the said property and further stated that by oversight he has not include the said property.

9. The defendants counsel argued that the plaintiff filed this suit in the year 2017 and filed this application in the year 2022. Hence,

it is barred by limitation and cause of action will also change.

Hence, defendant counsel prayed to reject the application.

10. No doubt the plaintiff filed this suit in the year 2017 but it is bare injunction. If reject the application the plaintiff is at liberty to file separate suit. So it leads to multiplicity of proceedings. But if allow the application the defendants can file additional written statement and contest the case. Therefore, the court opined that if granting of a amendment really sub-serves the ultimate cause of justice and avoid further litigation the IA can be allowed. The ratio laid down by the Hon'ble Supreme Court of India in the case of Rajesh Kumar Vs. K.K. Modi reported in 2006 AIR SC 1647 it is held that power to allow the amendment is wide and can be exercised at any stage of the proceedings in interest of justice. The Court while deciding such prayer should not adopt the hyper technical approach. Liberal approach should be in the general rule. In view of the law laid down by the Hon'ble Supreme Court of India in supra citation the present application is deserves to be allowed. Hence, this Court has answered **the point No.1 and 2 in the Affirmative.**

11. Point No.3 :- In view of the above discussion, I proceed to pass the following;

ORDER

**The I.A. No.7 filed by plaintiff U/O 6
Rule 17 is hereby allowed with cost of
Rs.500/-.**

**The plaintiff is permitted to carry
out the amendment as per proposed
amendment as per Rule 18.**

(Dictated to the stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the Open Court on this the 27th day of June 2023)

CJ & JMFC., Savanur.

