

IN THE COURT OF SENIOR CIVIL JUDGE &
JMFC.,

OS.138/2016

Petitioner : A.Banu

Vs.

Respondent: B.B.Ponnappa

ORDER

Heard on IA.4.

It is filed U/O 6 R 17 of CPC by the advocate for defendant to add paragraph in the written statement. It is stated that plaintiff with intention to kill the defendant dashed with his jeep and hence the defendant lodged complaint. I.O. filed charge sheet against the plaintiff. The I.O. of criminal case is not made party. Therefore, the proposed amendment is necessary to adjudicate the case.

The advocate for plaintiff has objected to the said application stating that the dispute is between the plaintiff and the defendant alone and it is nothing to do with the present proposed amendment. Through a frivolous application, the defendant wants to introduce a new theory in the above case. The application is after commencement of trial without tangible reason. Hence, it is prayed to dismiss.

Heard the both. Perused the materials.

The proposed amendment is that the plaintiff has not caused legal notice and complied mandatory provision of Sec.80 of CPC

and plaintiff has not included the public officer who has investigated the criminal case and filed charge sheet in SC.117/2012 and hence the suit is bad for non-joinder of parties.

Sec.80 as well as chapter 27 V A of CPC is not applicable and the defendant can not take help of the said provision. Because, the public officer is not party in the suit. Only the defendant is party who is private person. Hence, invoking of those provisions in the proposed amendment does not arise. Apart from this, it is pleaded in the plaint that as per information given by the defendant only, Ponnampet Police investigated the case and filed charge sheet against the plaintiff in the said criminal case. The investigation officer had no any personal vengeance against the plaintiff. Upon the complaint and statements, after investigation, he filed charge sheet. Hence, the investigation officer /public officer can not be made as party to the present suit. This is the suit filed by the plaintiff against the defendant seeking damages. The proposed amendment application is filed after commencement of trial. Moreover, no valid grounds are assigned in support of the application. The personal damages is sought in the suit. Hence, it is not maintainable. Therefore, I pass the following,

ORDER

IA.4 filed by the defendant U/O 6 R 17 of CPC is hereby dismissed with cost of Rs.100/-.

For cross of DW-1 by 05-08-2022.

Dated this the 16th day of July, 2022.

Sd/-xxx
Senior Civil Judge
Virajpet.

Heard on IA.19.

This application is filed by the plaintiffs U/O 6 rule 17 of CPC praying for amendment of plaint and also in the schedule. The proposed amendment sentence, as prayed in the IA, sought to be deleted is not in plaint para No.7, as it is stated in the proposed amendment. The proposed amendment is based on the commissioner report. As per the records, the suit is based on the survey report in FDP.5/2002. In the commissioner report, it is stated about encroachment by D1, 2, 4 and land holders of Sy.No.239/4 and Sy.No.239/1 amounting to 3.39 acre. On the basis of the report, the extent can not be amended, so also, the plaint para averment can not be amended. Because, the survey report has been already filed in FDP.5/2002. Apart from this, the valid grounds are not made out in the application. Moreover, if the application is not allowed, it will not cause any loss to the plaintiff. Hence, it is dismissed.

Senior Civil Judge
Virajpet.