

ORDERS ON IA No. 11

The present application has filed by the plaintiffs U/o 6 rule 17 R/w Sec. 151 of CPC seeking amend the plaint.

2. In support of the same the plaintiff No. 2 has filed affidavit wherein, he stated that due to diligence some important plea was not pleaded in the plaint in the earlier stage with respect to the suit property to show that suit Sy. No. 292/3 to an extent of 28 guntas was converted in to vacant site while bringing out satisfactory explanation to said facts. In order to amply the same before the Hon'ble court the proposed amendment is to be necessary. The said amendment does not change the subject matter of the suit and does not create any new cause of action. If the application is not allowed great hardship will be caused to the plaintiffs. On these grounds and such other grounds they prayed to allow the said application.

3. Per contra the defendants have filed objection by denying all the averments made in the application and stated that after filing the suit of 11 years later and evidence has been commenced. The plaintiff was already examined as PW-1, at this stage they have come up with this application, only to drag on the proceedings and with an intention to harm and harass the defendants. The proposed amendment is not necessary. On these grounds and such other grounds they prayed to reject the application.

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

5. On perusal of the entire records it appears that the present suit is for permanent injunction. Now the case is set down for cross of PW-1. At this stage the plaintiffs have come up with this application. In support of their application, they have relied on the decision reported in 2006(1) KCCR 458 in the case of B.N. Kamalanabha reddy V/s Munivenkatappa and others. On perusal of the aforesaid decision, the Hon'ble High Court held that if proposed amendment sought would enhance justice and would avoid multiplicity of proceedings and the court is entitled and liberal in allowing the amendment.

6. Here in the case on hand after the lapse of 10 years, the plaintiffs have sought the amendment to their plaint. In the suit for bare injunction, the possession plays very vital role in order to grant the relief. If an injunction will be granted on the basis of possession, the possession will be proved on the basis of boundaries and extent of properties. The proposed amendment sought by the plaintiffs with respect to the changing the nature of property. If this application is not allowed, it will cause hardship to the plaintiffs to prove their case. It is settled principle of law that the burden is always on the plaintiffs to prove their own case. Hence in order to prove their case, it is necessary to given opportunity to the plaintiffs to prove their case. Admittedly the plaintiffs have come up at belated stage. As per the rulings of Hon'ble High court and Apex Court delay in filing the application for amendment is not sole role to reject the said application. The Delay is caused inconvenience to

the defendants. However said inconvenience can be compensated by imposing heavy cost. In view of the same, this court proceeds to pass the following :

ORDER

IA No. 11 filed by the plaintiffs U/o 6 rule 17 R/w Sec. 151 of CPC is hereby allowed subject to payment of cost of Rs. 1,000/-.

The plaintiffs are permitted to carry out the necessary amendment in the plaint within 7 days from this day.

For amended plaint.

Call on

(DEEPU B.C.)
Addl. C.J. and JMFC, Bangarpet.