

:1:

KAKL200041302022



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND JMFC
AT BANGARPET**

PRESENT:

SMT. SUKEETA S. HADLI,

B.B.A.,LL.B.,(Hons)

I ADDL., CIVIL JUDGE & JMFC., BANGARPET.

O.S.NO.343/2013

DATED THIS 8th DAY OF NOVEMBER 2024

PLAINTIFF/S :

R.Padma.,

Rept. By her GPA Holder
Sri.G.Ramesh.

(Rep. by Sri.**G.S.V.**, Advocate)

-V/S-

DEFENDANT/S:

C.Doari.,

Dead by LR's.
Sulochana & others.,

(Rep. by Sri.**P.R.**, Advocate)

PARTIES TO I.A.NO.IX

Applicant/
Plaintiff:

R.Padma.,

Rept. By her GPA Holder
Sri.G.Ramesh.

-V/S-

Opponent/
Defendant:

C.Doari.,

Dead by LR's.
Sulochana & others.,

ORDER

The plaintiff has filed the application seeking an order of this Court to amend the plaint, in the interest of justice and equity.

PROPOSED AMENDMENT:

To add in the Prayer Column after the words “against the defendants”, as (1) Declare the plaintiff is the absolute owner of the suit schedule property.

2. In the affidavit accompanying the application it is stated that, the plaintiff has filed the present suit seeking the relief of mandatory injunction. It is stated that at the time of filing of the suit the plaintiff was unable to seek the relief of declaration with respect to suit schedule property. The defendants have contended that the suit is not maintainable without seeking the relief of declaration. As such the proposed amendment is just and necessary for proper adjudication of the matter in dispute. If the application is allowed, the defendant will not be put to any hardship. Therefore, the applicant prays to allow the application.

:3:

3. The defendant has filed the objections to the application in hand. In the objections it is stated that the application is neither maintainable in law or on facts. It is stated that the contents of the affidavit are all false and flimsy. It is the bounden duty of the plaintiff to seek his title to be declared before seeking further relief of mandatory injunction. The proposed amendment will change the subject matter of the suit and will deprive the rights which are accrued to the defendant. It is settled principle of preposition that no application can be filed when the case is posted for judgment. The present application has been filed only with a malafide intention to protract the proceedings. Hence, the defendants have prayed to reject the application.

4. I have heard the counsels for plaintiff and defendants on I.A No.8 and perused the material available on record.

5. The following points arise for determination:-

1. Whether the proposed amendment is necessary to determine the real question in controversy ?
2. What order?

:4:

6. After hearing the arguments and on considering the relevant materials on record, my findings on the above points are hereunder:-

Point No.1 : In the **Affirmative.**

Point No.2 : As per final order for
the following;

REASONS

7. **Point No.1:-** The plaintiff has filed the suit seeking the relief of mandatory injunction with respect to suit schedule property. The present application came to be filed when the case was posted for judgment.

8. According to the plaintiff, she is the absolute owner of the suit 'A' schedule property having purchased it under the registered sale deed dated 24.01.1991. From the date of purchase the plaintiff is in possession and enjoyment of the suit 'A' schedule property by paying taxes to the concerned authority. The property of the defendant is situated on the western side of plaintiff's property. The defendant without having any right, title or interest has encroached and illegally

:5:

got constructed structure in the property belonging to the plaintiff, which is more fully described as suit 'B' schedule property. The defendant has encroached property of the plaintiff to an extent of East-West: 10 feet and North-South:32 feet. Hence, the instant suit seeking the relief of mandatory injunction.

9. The defendants have denied the case of the plaintiff by filing the written statement. In addition to the denial it is contended that though the plaintiff is the owner of 3 guntas of land but in actuality plaintiff is in possession of more than 6 guntas of land. The plaintiff is in excess possession of more than 3 guntas on the western side of her land. The excess land in which the plaintiff is in possession is the Karab land. It is false to allege that the defendant has encroached and put up construction in her property. The defendant has purchased site property bearing No.42 out of alienated Sy. No.112/5,112/6,113/1,113/2 of Dasarahosahalli village. Though in the sale deed it is mentioned the property extent as 40 x 30 feet but the actual available measurement is 50 x 30

:6:

i.e., there was karab land which was attached to the site to an extent of 10 x 30 feet.

10. The defendant about 17 years ago has constructed residential house to an extent of 50 x 30 feet. The plaintiff has got no right over the suit 'B' schedule property measuring to an extent of 10 x 30 feet. The plaintiff and her husband are carrying out packaged drinking water business in suit 'A' schedule property without obtaining any permission from the concerned authorities. It is when the act of the plaintiff was brought to the notice of the concerned authority the plaintiff has filed this false suit. Therefore the defendant has prayed to dismiss the suit.

11. The suit is filed in the year 2013. The defendant has filed his written statement and amended written statement on 25.06.2013 and 30.10.2020 respectively. This Court has framed issues on 24.03.2014. The parties have adduced their evidence and accordingly after hearing the arguments on merits the case was posted for judgment. It is at this stage the application in hand came to be filed.

12. It is pertinent to note that though there is delay on the part of the plaintiff to move this application but even as per the precedential guidance of the Supreme Court, an amendment can be permitted, if it is intended to determine the real question in controversy and that all amendments which are necessary for the purpose of determining real questions of controversy between the parties, shall be allowed, if such amendments sought for do not change the basic nature of the suit.

13. The defendant has contended that the amendment changes the nature of the suit. It is important to note that a change in the nature of relief claimed shall not be considered as a change in the nature of the suit. Or else, in no case of suit for one relief such as permanent injunction, amendment can be permitted to alter relief to grant declaration of title, recovery of possession etc. The power of amendment should be exercised in the larger interests of doing full and complete justice between the parties and all amendments, which are necessary for the purpose of determining the real question in

controversy, should be allowed.

14. Here is a classic case where the defendant has denied the very title of the plaintiff over the suit schedule property. The plaintiff ought to seek the appropriate relief of declaration. As it is well settled preposition that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so. The parties have fought the legal battle for more than a decade such being the case it would in the best interest of justice and equity to allow the parties to get their dispute adjudicated at once in a single case. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.

15. If the amendment as proposed is allowed, no right accrued to the defendant would get defeated as the said defendants are denying the possession of the plaintiff and are contending that they are in possession of the property. The

:9:

defendants will not be put to any hardship, since they would have opportunity to file Additional Written statement, if needed and also cross-examine the plaintiff to that effect. Hence considering foregoing, the application filed by the plaintiff is to be allowed. Hence, in the light of above discussion the application deserves to be accepted. **Hence, I answer point No.1 in the Affirmative.**

16. Point No.2:- In view of the discussion made above, I proceed to pass the following:-

ORDER

I.A.No.9 filed by the plaintiff under Order 6 Rule 17 R/w. Section 151 of CPC is hereby allowed.

The plaintiff is to carry out the amendment and furnish the amended plaint by next date of hearing.

No order as to costs.

*(Dictated to the **Stenographer**, typed by her on computer and corrected by me, then pronounced in the open Court on this day **8th November 2024.**)*

Sd/-
I Addl., Civil Judge and J.M.F.C.,
Bangarpet.