

Orders on I.A.No.2 U/o 6 rule 17 of CPC filed by the Plaintiff.

At the stage of to hear on IA No.1, the Plaintiff has filed I.A. No.2 U/o 6 rule 17 of CPC to seeking amendment of Plaint by way of proposed amendment in said application, in the interest of justice.

2. In the accompanied affidavit to support of IA No.2 contended that, she filed a suit for permanent injunction as claiming owner in possession of suit property acquired under gift deed and left the three feet set back in her property. In the mean time he attempted to put up under ground drain pipe line in B Schedule property. But, defendants have obstructed only filed this suit. After filing of the suit, the defendants closed the windows with Zinc Sheet on southern side of suit property due to hide the light and causing hardship if is not removed. The amendment does not change nature of suit or cause of action. The amendment is necessary for complete and effectual adjudication of the case. If the application is allowed, no hardship to the defendants. Hence, she prays to allow the application.

3. On other hand, the defendants filed objections by denying the contents of affidavit in support of application inter-alia contend that, application is not maintainable either in law or on facts. It is further that, they do not aware of private complaint in PCR No.

127/2022 filed by plaintiff before Hon'ble Sr. Civil Judge and JMFC, KGF. They have also filed suit in OS No. 102/2021 before this court for permanent injunction, which is pending consideration. The documents produced by the plaintiff will not get any right or anything from the court. The proposed amendment will change the nature of suit and cause of action. On these ground, they prays to dismissal the application with exemplary cost.

4. Heard the arguments on IA no.2 by counsel of plaintiff and that of counsel of defendants and perused the documents available on record.

5. The points that arise for my consideration is that,

1. Whether the proposed amendment to plaint is just and necessary to decide the controversy between the parties?

2. What Order?

6. My findings to the above points are:-

Point No.1: In the Affirmative

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

R E A S O N S

7. Point No.1: The plaintiff has filed suit against defendants for relief of permanent injunction pertaining to the suit property. After set down the matter for to hear on IA no.1, the Plaintiff filed present application to amendment of plaint by incorporation of prayer for the relief of mandatory injunction with pleadings.

8. Before discussing the merits of the application in detail, it is just and necessary to go through the **Order 6 rule 17 of CPC**, ***“Amendment of Pleadings: The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”.***

9. I have perused the averments made in the plaint and written statement filed by both parties in this suit. On perusal of proposed amendment sought for mandatory injunction after put up the windows with Zinc Sheet in B-Schedule property with pleadings. The defendants denied the same. From the relief of mandatory injunction in the proposed amendment ought to have prove by plaintiff and consider the contention in full fledged trial. As per Order 6 rule 17 of cpc in case the amendment to pleadings before commencement of trail, the court has to allow the same for the purpose of determining the real questions in controversy between the parties. Then only, parties can amend the pleadings at any stage of the proceedings. In order to give final verdict and to avoid multiplicity of proceedings in respect of prayer of plaint for mandatory injunction over B-Schedule property with pleadings against case of plaintiff. It is just and necessary to consider the application filed by Plaintiff. Neither amendment sought for change

the nature nor cause of action for the suit of Mandatory injunction. On these grounds, the objections filed by defendants cannot consider at stage until full fledged trial, if the any delay to filling the present application should be impose minimum cost in order to avoid the similar application at this stage. Hence, it is very much necessary to amendment of plaint by proposed amendment in order decide the issue for controversy between parties. Accordingly, I answered to point No.1 in the affirmative.

10. Point No.2: In view of any afore said findings proceed to pass the following:

ORDER

I.A.No.2 U/o 6 rule 17 of CPC filed by the Plaintiff is hereby allowed on cost of Rs.100/-.

Consequently, The Plaintiff shall permit to carry out the amendment in plaint within time and to file amended plaint.

R/by 13.04.2023.

(Dictated to typist directly on computer, typed by her, corrected by me and pronounced in the open court on 10th day of March 2023)

Sd/-

(VINOD KUMAR.M)

I Addl. Civil Judge & JMFC.,
KGF