

ORDERS ON I.A.NO.14

This is an application filed by the plaintiffs seeking the amendment of the plaint as per the schedule mentioned in the application.

2. The application is supported with the affidavit of one of the plaintiff. In his affidavit, he has stated that the plaintiffs have filed this suit against the defendants for the relief of declaration and consequential relief of permanent injunction. It is submitted that in the plaint due to non-availability of resurvey tippani copy, they could not mention the year of resurvey and the type of survey held. When they have traced out resurvey tippani copy in the concerned office and they told that resurvey held in the year 2011. In order to clarify this crucial aspect, it is just and necessary to incorporate the year of resurvey and the type of survey held. In view of this, it is just and necessary to permit them to amend the plaint. Hence, it is prayed to allow the application.

3. On the other hand, the defendant No.12 has filed his statement of objections and it is contended that the proposed amendment is not an event subsequent to filing of the suit and no reasons are assigned in the affidavit as to what made the plaintiffs not to plead the same when they presented the plaint and the affidavit is bald as vague as possible, precisely, no reasons are

forthcoming in the affidavit in that regard. By stating these grounds, it is prayed for rejection of the application.

The defendants No.13 to 21 have filed their statement of objections and contended that the amendments sought for is not at all maintainable in law and therefore, on this score alone the above application is fit to be rejected. It is contended that it is a settled principle of law that any amendment can be sought before framing of issues, as per the amended Civil Procedure Code. In the instant case, issues have been framed long ago and after having in-ordinate delay, the plaintiffs have filed this application and it is not permissible in law. It is further submitted that the item No.1 of the proposed amendment is sought only to cover up the latches and loop holes in the plaint filed by the plaintiffs. It is settled principles of law that no loop holes or latches can be covered by way of an amendment. Under these circumstances, the proposed amendment is not maintainable under law. The plaintiffs have not showed the reasons why they have not incorporated such a pleading in the original plaint and no reasons are forthcoming in the affidavit in that regard. In the absence of such plea mentioned in the affidavit, the same is liable to be dismissed in limine. Under these circumstances, the application of the plaintiffs is liable to be dismissed without a cursory glance on the ground of delay and latches. This application filed at the stage of evidence on the plaintiffs side, just to protract the this

suit. By stating these grounds, it is prayed for dismissal of the application with costs.

4. Heard the arguments.

5. The following points would arise for my consideration:-

1) Whether the plaintiffs have made out grounds to allow the application and thereby permit them to amend the plaint as prayed in the I.A.?

2) What order?

6. My findings to the above said points are as follows:-

Point No.1 :- In the **affirmative**.

Point No.2 :- As per final order,

for the following :-

REASONS

7. **Point No.1** :- This is a suit filed by the plaintiff seeking the relief of declaration and consequential relief of permanent injunction in respect of the suit land bearing Sy.No.7 (Old Sy.No.6) of Halehalli village. The defendants have contested the matter by filing their written statements. Now, this court has framed the issues and the stage is of now is for the evidence on

the plaintiff side. At this juncture, this application has been filed by the plaintiffs seeking the amendment in the plaint.

8. It is the contention of the plaintiffs that in the plaint due to non-availability of resurvey tippani copy in respect of the suit land, they could not mention the year of resurvey and the type of survey held in respect of the suit property. It is their contention that recently, they have traced out resurvey tippani copy in the concerned office and came to know that the said resurvey held in the year 2011. In order to clarify these things, they prayed incorporate the year of resurvey and the type of survey held.

9. It is true that the defendants have filed their statement of objections and they have objected formally by stating that there is a delay and also that the reasons are not assigned for not bringing the facts well within time. It is also true that now the case is posted for the evidence on the plaintiff side. Whether this would disentitle these plaintiffs to seek the amendment in the plaint is to be looked into. As per the provisions of Order VI Rule 17 of CPC, the Court is required to look into whether the amendment sought is having a bearing on the facts of the case and whether the said proposed amendment would enable the court to decide the entire controversies between the parties or not. In my opinion, whatever the amendment sought by the plaintiffs is in respect of the description of the suit property, which was not stated in the plaint, as they would not be in a position to know the same out of

their due diligence. In view of this, I am of the opinion that the claim of the plaintiffs in seeking the amendment is sustainable. Moreover, these defendants are at liberty to file their additional written statement to dispute the contention of the plaintiffs. Under these circumstances, I hold that the application filed by the plaintiffs is sustainable. Accordingly, I answer **this point in the Affirmative.**

10. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that the application filed by the plaintiffs is deserves to be allowed. By looking in to the delay caused by the plaintiffs in bringing the proposed amendment application deserves to be allowed with heavy costs. Hence, I proceed to pass the following:-

ORDER

The application U/o.6 Rule 17 of CPC filed by the plaintiffs is allowed on a total cost of Rs.200/-, which is payable to the defendants.

The plaintiffs are permitted to amend the plaint as prayed for.

Call on for payment of costs, amendment of the plaint and to submit the amended plaint by:- **05.10.2017.**

Senior Civil Judge,
Maddur.