

Orders on IA No.14

1. The application filed by the defendant NO.6 u/o 6 rule 17 r/w Sec. 151 of CPC seeking pass an order for amendment as sought in the application for the reasons set out in the affidavit annexed to the application.
2. In the affidavit on oath the defendant No.6 has contended that, the plaintiff has filed this suit against the defendants for Specific performance of contract over the suit schedule property. During the pendency of suit Hon'ble Government of India has acquired the suit schedule proper for formation of national Highway through ministry of Road transport and highway on 09.03.2021. This fact is recently came to the knowledge of the plaintiff. Hence, amendment is necessary. The filing of application is only for bonafide reason and not unintentional one. If the application is not allowed it will leave the multiplicity of the proceedings. No injustice and hardship and damages caused to be other side. Hence, the defendant No.6 sought for allow the allowing application in the interest of justice and equity.
3. The plaintiff has filed objection and stating that, the application is not maintainable either in law or on facts. The suit filed by the plaintiff against the defendants for Specific performance of contract over the suit schedule property. The present application is filed without any jurisdiction, to drag on the proceedings with an intention to harass to defendants. Now the defendant No.6 want to amend the written statement only to harass the plaintiff. All the reasons narrated in the affidavit are untrue, created and concocted by obtaining the relief from the hands of the court. When the case is posted for further chief examination of PW1 and cross examination of PW2 after the commencement of the trail the defendant No.6 has come up with the present application. Hence, prays for dismissal of the application with cost.
4. On the basis of application and objection the point for consideration is,
 1. Whether applicant/Defendant No.6 has made out a ground to allow the present application for the reasons as set out in the affidavit at this stage ?

2. what order ?

5. My answer to the above said point are as follows:

Point No.1. In the affirmative.

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

REASONS

6. On perusal of the entire record along with pleadings it reflects that, the suit is one Specific performance of contract in respect of the suit schedule property. After filing the written statement, issues were framed then posted for plaintiff evidence. The plaintiff filed his chief examination by way of affidavit, at this stage, present application is filed. On perusal of the reasons stated in the affidavit in supporting of the application and schedule of the amendment mentioned in the application. Admitted the suit is Specific performance of contract the defendant No.6 wants to amendment in the written statement. The defendant No.6 clearly narrated in the affidavit that during the pendency of the suit the national authority as acquired the suit schedule property for the purpose of formation of road. This mistake is rectifiable one. If the amendment is allowed there is no changes of nature of suit and the plaintiff is at liberty to cross examination to the defendant No.6 as well as their witnesses. The amendment sought in the application it is nothing but a consequential relief. It is in no way change the cause of action, nature of the suit or take away the right already accrued to the defendants. On the other hand when it is posted for chief examination of PW1 and cross examination of PW2 by that time the defendant No.6 has come up with the present application. After the commencement of the trial the application is filed.
7. As per order 6 rule 7 of CPC the court may at any stage of proceedings allow either party alter or amend the pleadings in such manner and on such terms as may be just and all such amends shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. But embargo in the form of proviso it is clearly held that, no application for amendment shall be allowed after commencement of trial unless the court comes to conclusion that inspite of due diligence, the party could not have rise the matter before the commencement of the trial. The objection filed the plaintiff has raised that, only with an intention to drag the proceedings the

present application is filed. But it is not acceptable. When it is posted for further chief examination of PW1 and cross examination of PW2. The defendant No.6 has come up with the present application. The reasons for amendment as sought in the application properly narrated by the defendant No.6. The defendant No.6 has made out a ground for allow the application. The amendment as sought in the application will not change the nature of the suit, cause action are take away right already accrued to the defendants. Apart from the above said discussion the plaintiffs have come up with the application with commencement of trail with stage. In view of the above said discussion I answer, Point No.1. In the affirmative.

8. **Point No.2:** In view of above said discussion at point No.1, I proceed to pass the following,

ORDER

The IA No.2 filed by the defendant No.6 u/o
6 rule 17 r/w sec. 151 of CPC is hereby allowed
with cost of Rs.300/-.

The defendant No.6 is hereby directed to
carried out amendment in the written
statement.

Call on for amendment and amended written
statement by 06.01.2024

Addl. Senior Civil Judge,
Srirangapatna