

ORDERS ON IA-IV FILED U/O 6 RULE 17 OF CPC

Plaintiff has filed the application seeking permission to delete para No.9 in the plaint as mentioned in the application for amendment.

2. In the accompanying affidavit the plaintiff has stated that the suit is filed for partition and separate possession of the suit schedule properties. While preparing the plaint, by oversight the pleading of other suit is added in para No.9 of the plaint. If the said paragraph is not removed from the plaint, it will cause confusion in the proceedings. On the other hand no prejudice will be caused to the other side if the application is allowed said paragraph is deleted. Hence, the application to delete the para No.9 from the plaint

3. This application is resisted by the defendant No.1 and 3 and they have contend that the application is not

maintainable either in law or on facts. The above case is set down for plaintiff's evidence and the application is filed in belated stage. The contention urged in the application is false and fabricated for this suit and the application is filed only to drag on the proceedings. On these and other grounds, they prayed to dismiss the application.

4. I have heard the learned counsel for the plaintiff and defendants. On careful and meticulous perusal of the materials available on record it is found that the plaintiff has filed the present suit against the defendants for partition. The plaintiff has assigned the reasons in the affidavit annexed to the application and also argued before the court that by oversight the pleading of other suit is contained in para No.9 of the plaint. The said paragraph is to be removed from the plaint, otherwise, it will cause confusion for cross examination of the plaintiff. On perusal of above said contentions and order sheet of the suit it appears that there is no doubt, the application for amendment is brought by the plaintiff after commencement of trial. But it appears to the bare eye that the proposed paragraph to delete is absolutely relates to a different suit and by oversight said paragraph is typed in the present plaint. Further there is no bar to allow the application

for amendment of pleadings which are necessary to resolve the dispute between the parties effectively on merits, if the proposed amendment will not cause any harm or injury to the adverse party. The objection raised by the defendants can be looked into on merits and they are at liberty to file their additional written statement in this respect.

5. It is a trite law that the provisions of Order 6 Rule 17 of CPC governs the amendment of pleadings. While amendments can be allowed to resolve real dispute between parties, they cannot prejudice or harm the opposing party, especially by withdrawing admissions already made.

Modification of Admissions: In cases like Heeralal Vs Kalyan Mal(1998), Hon'ble Apex Court held that an amendment withdrawing an admission should not be allowed if it prejudice the other party.

Further, in the case of M. Revanna Vs. Anjanamma(2019): the Hon'ble Supreme Court reiterated that admission in pleadings bind the party and cannot be withdrawn casually.

However, some exceptions is there, that the admission was made inadvertently or under a bonafide mistake, where

new facts or evidence come to light that render the admission incorrect, the amendment is necessary to prevent a miscarriage of justice. Moreover, it is also held by the same Apex Court in a decision of the Division Bench in the year 2019 in the case between Varun Pahwa vs. Renu Chaudhary that "it is a well settled that amendment in pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of Rules or Procedure". The Hon'ble Supreme Court has observed that "inadvertent mistake made in the plaint cannot be refused to be corrected when the mistake is apparent from the reading of the plaint Amendment that was sought in the case was simple. In the plaint, the plaintiff was described as Varun Pahwa through Director of Siddarth Garments Pvt. Ltd., though it should have been....."

6. Therefore, in view of the above basic principles on amendment of pleadings and also in view of the reason assigned by the plaintiff in the application and affidavit, I am of the considered opinion that if the application to remove the odd para from the plaint by way of amendment is allowed it will subserve the justice and will be helpful to decide the

matter in controversy and definitely it will not cause any harm or injury to the defendants. The objection of the learned counsel for the defendants is sans merit and does not hold any water. In the light of background facts, the application for amendment deserves to be allowed just to resolve the controversy between the parties and to minimize the litigation. Hence, I proceed to pass the following order.

O R D E R

IA No.IV filed by the plaintiff U/O
6 Rule 17 of CPC is hereby allowed on
cost of Rs.200/-.

The plaintiff is permitted to
carryout necessary amendment as
sought for and to furnish amended
plaint by 16.12.2024.

Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.