

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

Plaintiffs have filed the application and sought permission to amend the plaint by adding few more paras as para No.3(a) and 3(b) and the prayer column.

2. In the accompanying affidavit the plaintiff No.4 on behalf of himself and other plaintiffs has stated that the suit is filed for partition. That after going through the written statements averments and also during the course of cross examination some facts came to their knowledge and in this respect they gone through the records and they felt it necessary to add the proposed paras in order to adjudicate the matter effectively on merits. So also it is necessary to permit the plaintiffs to plead the proposed facts in their plaint since the said facts are left out at the time of preparing their plaint by oversight. Therefore, they have to plead that point of law in their plaint by way of amendment. Hence, the application.

3. This application is resisted by the defendant No.1 to 3 contending that the application is devoid of merits, the evidence of both the parties has been completed. That the

allegations made in the applications are untenable and applicants have no locus standi to file the application. The applicants have no concern with the matter and they are stranger to the family of the defendants and suit schedule properties. If the applicant are really members of the family of the defendants they no everything about the litigation in respect of the property of the family. However the amendment sought for is knock off of the properties of the defendants. On these grounds prayed to dismiss the applications.

4. I have heard the learned counsel for the plaintiffs and defendants. On careful and meticulous perusal of the materials available on record it is found that the plaintiffs have filed the present suit against the defendants for partition. Defendants have denied the claim of the plaintiffs as they are unconcerned to the their family and the properties. Now by way of amendment the plaintiffs are seeking to amend the plaint to insert two more paras to narrate that some proceedings has been decided by the revenue courts and that out of 1 acre in Sy. No. 47 of Sonahalli village out of which some portion was allotted and standing in the name of one Chikkabairaiiah. That the plaintiffs also sought to seek

some more reliefs and to add proposed item to the plaint schedule. The defendants have seriously denied the claim of the plaintiffs and also prayed to dismiss the applications. Under the given background and circumstance of the present application, I have bestowed my anxious consideration to the rival submissions of the parties. Now let me consider the application in the light of well-settled legal principles and judicial interpretation. It is trite that, there is no absolute bar to file an application for amendment of the pleadings after commencement of trial. Under such circumstances the party has to show that, inspite of due diligence, he could not file the amendment application in time.

5. The basic test for allowing amendment application is that court has to consider whether the proposed amendment will change the nature of the suit or will change the cause of action or would displace the other side in entirety. This is the basic principle to be considered at the time of looking into the application for amendment of pleadings. In the light of said principle enunciated in the catena of decisions, in my considered opinion if the amendment is allowed no harm or injury will be caused to the defendants. Allowing of proposed amendment is necessary to avoid multiplicity of proceedings

and to avoid the parties to drive for second round of litigation. The defendants are at liberty to file additional written statement refuting the averments made in the amended pleadings. Furthermore, the proposed amendment definitely will not change the nature of the suit nor the cause of the action.

6. Therefore, in view of the above said basic principles on amendment of pleadings, if the application is allowed subject to cost and some conditions due to delayed steps it will be helpful to the court to resolve the controversy between the parties and to minimize the litigations. Hence, I proceed to pass the following order.

#### O R D E R

IA No.XII filed by the plaintiffs

U/O 6 Rule 17 of CPC is hereby allowed  
on cost of Rs.500/-

The plaintiffs are permitted to  
carryout amendment and to furnish  
amended plaint by plaintiffs on next  
date without fail 18.04.2023 .

Addl. Senior Civil Judge & J.M.F.C.,

Hunsur.