

ORDERS ON I.A.No.VII

The plaintiff has filed I.A.No.VII under Order 6 Rule 17 of Code of Civil Procedure and seeking permission to amend the prayer column inserting the relief declaring that, the judgment and decree passed by Civil Judge and JMC in OS No.199/2017 dated 01.03.2018 is null and void.

2. In the affidavit, which enclosed to I.A.No.VII, wherein she has stated that she has filed the suit against the defendants for the relief of declaration of consequential relief of permanent injunction. Further it is stated that, the father of defendant No.1 and 2 have purchased the property bearing Sy.No.118/D4 of Manuganahalli village under registered sale deed dated 08.02.1963. But, it is falsely stated that, they have purchased half of portion out of 1 acre 18.04 guntas. Further it is stated that, the defendant No.1 and 2 colluding

with some vested interest made ostensible person as a defendant and played for before the court and obtained a decree. The plaintiff was not party to the said suit. Therefore, the said judgment is not binding on the plaintiff. Accordingly she prays for allow the application.

3. On the other hand, the defendant filed objection to the application.

4. On the basis of the pleadings, the following points arise for my consideration;

1. Whether the plaintiff has made out ground that, the proposed amendment to be necessary for the purpose of determining the real question in controversy between the parties?

2. What order?

5. Heard counsel appearing for the plaintiff. Perused the entire records and documents available and my findings on the above points are answered as follows:

Point No.1 : In the Affirmative

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

REASONS

6. **Point No.1:-** the plaintiff filed a suit against the defendants for the relief of declaration and permanent injunction. On the other hand, the defendants denied the case of the plaintiff.

7. It is noticed from the records is that, the trial was not yet commenced. The plaintiff come up with the present application and seeking permission to amend the plaint as prayed for in the accompanying application.

8. Now the question arise before this court is, whether the amendment is necessary for the determination of the real question in controversy between the parties. Before discussion of the above point, this court glance the provision under Order 6 Rule 17 of Code of Civil Procedure. Hence, it is relevant to mention under

Order 6 Rule 17 of Code of Civil Procedure;

9. Rule 17 provides for amendment of pleading it reads under;

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.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. The said provision makes it clear that, at any stage of the pleadings allow the either party to alter or amend his pleadings. If the proposed amendment be necessary for the purpose of determining the real question in controversy between the parties.

11. In the instant case, the plaintiff filed the suit for declaration and injunction.

On the other, hand the defendants denied the claim of the plaintiff.

12. The plaintiff cannot withdrawn any admissions. It is settled law that the grant of application for amendment shall be subject to certain conditions namely, 1) when the nature of it is changed by permitting amendment 2) when the amendment would result in introducing new cause of action and intends to prejudice the other party and when allowing amendment applications defeats the law of limitation. The proposed amendment does not change the nature of the suit or cause of action and there is no defeats of the limitation in the amendment application.

13. If proposed amendment is allowed, the defendants have got right to make file additional written statement and to adduce evidence to disprove the case of the plaintiff. To avoid the multiplicity of proceedings the proposed amendment is

allowed. **Hence, this court answered Point No.1 in the Affirmative.**

14. **Point No.2:-** In view of the discussions and conclusion arrived at Point No.1, this court pass the following;

::ORDER::

❖ The I.A.No.VII filed by plaintiff under order 6 rule 17 of R/w Section 151 of C.P.C. is hereby ***allowed***.

❖ The plaintiff is permitted to amend the plaint and furnish the amendment plaint within 14 days from the date of this order.

For amendment of plaint.

Call on: 29.05.2024

**Senior Civil Judge & JMFC.,
K.R.Nagar.**