

**ORDER ON I.A NO.3 FILED U/O 6 R-17 R/W SEC. 151 OF  
C.P.C.**

This application is filed by the applicant/plaintiff seeking to alter the relief in the prayer and amend the pleadings of the plaint as per the relief claimed in the application.

**2.** Further the applicant Somashekhara Shetty filed his affidavit along with application, where he has sworn on oath stating that, the suit is filed for the relief of permanent injunction earlier in respect of the schedule property. When the defendant appeared before this court, he has filed his statement and denied the right of the plaintiff over the schedule property. Based upon the said denial of the title of the plaintiff, this court has framed the issues, whether the suit is not maintainable for lack of prayer for declaration of title. Since his title over the schedule property is disputed by the defendants in order to prove his right over the property, it is necessary for him to prove his ownership. Accordingly, the relief of declaration is necessitated to adjudicate the matter in dispute effectively. Hence, prays for allowing the application.

**4.** The defendant filed objection and submitted that, the plaintiff ought to have paid the court fee on the market value of the property and the suit which is filed for injunction may be amended for declaration if the plaintiff complies the proper

payment of court fee. Hence, prays for dismissal of the application.

4. Heard the counsel appearing for the applicant/plaintiff and also perused the pleadings of IA in respect of the rival pleadings and verified the documents produced before this court.

5. The following points arise for this court's consideration.

**1) Whether applicant/plaintiff has made out sufficient grounds for allowing the present applications?**

**2) What Order?**

6. This court findings on the above points for consideration are as under:

**Point No.1: In the Affirmative.**

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

**REASONS**

7. **POINT NO.1:**

Upon verifying the pleadings, documents and on hearing the rival parties, the suit is preferred for injunction, wherein the plaintiff alleged that, the defendant causing interruption in respect of the possession of the plaintiff over the schedule property. However when the defendant upon service of summons appeared before this court and filed objections, he has presented this application seeking for amendment of the

plaint as per the assertion stated in the application. The plaintiff in his pleadings of plaint, he is asking to amend the relief for declaration along with the previous relief of injunction since his title in respect of the suit schedule property has been resisted and disputed by the defendant in his statement of objections. Accordingly in order to elucidate, the real conflicts and ambiguities between the parties regarding the title of the parties over the schedule property, the relief of declaration so as to decide the title and to clarify the clouds regarding the ownership is prerequisite and essential for the proper and effective adjudication of the suit.

**8.** Admittedly the suit is filed for injunction and trial is not yet commenced. As per the provision envisaged under the code, the court may at any stage of the proceeding allow, either party to alter or amend their pleadings in such a manner and on such terms as may be just and necessary and all such amendments shall be made necessary purpose of determining the real controversies between the parties.

**9.** Provided that, no application for amendment shall be allowed after the commencement of trial 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 the trail. Admittedly in the instant application there is no recitals found stated by the plaintiff that, the said application was not instituted in spite of due diligence. However the suit has not

been posted for trial and hence the application filed by the plaintiff/applicant is to amend the relief of declaration along with the previous relief of injunction. Therefore if the applicant/plaintiff is permitted to alter the said pleadings of the plaint, it is for him alone to prove the said pleadings of the plaint by leading proper, cogent and substantiate piece of evidence during the course of trial before this court.

**10.** Further it is the plaintiff alone is under the obligation and burden to prove the said pleadings and he has to establish his title, possession and alleged interference by the defendants in respect of the suit schedule property. However by permitting the applicant to amend the pleadings as requested that itself does not confer any right upon the applicant/plaintiff or the plaintiff cannot avoid or forgo from his responsibility of proving his pleadings during trial.

**11.** Further if the amendment is not allowed and if the plaintiff is not permitted to alter his pleadings of plaint, it will causes prejudice upon the plaintiff and even if the plaintiff succeeded in the suit, the plaintiff would be rendered remediless. On the contrary by permitting the plaintiff to amend the pleadings it will not prejudice on the part of the defendant to substantiate his pleadings of statement during trial. As discussed above in the opinion of this court by mere permitting the plaintiff the rights of the defendants cannot be taken off. On the other hand, the plaintiff must be provided opportunity to prove the

pleadings and to amend his pleadings which is required to be proved during the course of trial. Further certainly the plaintiff is bound to pay the requisite court fee on the relief claimed. Accordingly the application is liable to be allowed. Hence, this court without further discussion proceeds to answer **point No.1 in the Affirmative.**

**12. POINT NO.2:**

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

**ORDER**

The I.A.No.4 filed by plaintiff under order 6 rule 17 of C.P.C. is hereby **Allowed.**

Accordingly the plaintiff is permitted to amend the pleadings of the plaint as per the application and directed to furnish amended plaint to that effect.

Further the plaintiff shall bear the requisite court fee on the subsequent relief of declaration.

Call on 16.12.2024

**(Chandan S)**  
**Prl. Civil Judge & JMFC.,**  
**K.R.Nagar.**