



**Orders on I.A.No.XI**

The applicant/plaintiff has filed I.A.No.XI u/Order VI Rule 17 of CPC seeking permission to amend the plaint as prayed for in the application.

2. In support of the application, the applicant/plaintiff has sworn to an affidavit and stated that, she has filed the present suit in respect of suit property for the relief of perpetual injunction restraining the defendant from interfering with her possession. The plaintiff in her affidavit further stated that, her husband B.K.Shivanna had purchased the suit property i.e., 5 guntas of land in Sy.No.289/2 through registered sale deed dated: 06.09.1995. After the visit of court commissioner and after perusal of relevant documents, the plaintiff came to know that, as per the description and boundaries of suit property, the property of plaintiff is situated in new Sy.No.289/1A (new phode). As such, the proposed amendment is very much necessary for determining the real question in controversy between the parties. Accordingly, plaintiff prays for allow the application.

3. Per contra, the defendant has filed objections to I.A.No.XI contending that, application is not maintainable either in law or on facts. The plaintiff has filed this suit in respect of 5 guntas of land out of 1 acre 1 gunta in Sy.No.289/2A and the husband of the plaintiff had purchased property in Sy.No.289/2. The defendant in his written statement contended that, Sy.No.289/1A belongs to him and the husband of the plaintiff had not purchased land in the

said survey number. If the application of the plaintiff is allowed, it will definitely change the nature of the suit and casue of action. Apart from that, the proposed amendment is contrary to the very sale deed of the plaintiff. The plaintiff by filing the present application is trying to get the property of the defendant. Accordingly, the defendant prays for dismissal of the instant I.A.

4. Heard and perused.

5. The point that arises for my consideration is as follows:-

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

6. My answer to the aforesaid point is in '**Affirmative**' for the following:-

**:- REASONS :-**

**7. Point No.1:-**The plaintiff has filed this suit against the defendant for the relief of injuncion restraining him from interfering with her possession and enjoyment over the suit property.

8. According to the plaintiff, the property purchased by her husband is now situated in new phode Sy.No.289/1A. The said fact came to the knowledge of the plaintiff, when the court commissioner visited the spot and measured the property. As per the description and boundaries mentioned in the sale deed, the

property of the plaintiff is situated in Sy.No.289/1A. As such, it is necessary to amend the plaint by inserting as 'new phode 289/1A' after Sy.No.289/2A. Apart from that, the plaintiff seeks permission to insert one more paragraph to the plaint stating that, the suit schedule property as purchased by her husband now situated within new phode Sy.No.289/1A and the plaintiff is in possession of the same.

9. Per contra, the defendant contends that, the proposed amendment is contrary to the sale deed of the plaintiff. The property in Sy.No.289/1A is belongs to him. By filing the present application, the plaintiff is making attempt to get the property of the defendant.

10. The present suit is for bare injunction. In this suit, at the instance of defendant Taluka surveyor was appointed as court commissioner to inspect and measure the suit property. The court commissioner has submitted the report stating that, the boundaries of the property as mentioned in sale deed dated: 06.09.1995 is situated in Sy.No.289/1A. Based on the report of court commissioner, the plaintiff has filed the present application seeking permission to amend the plaint.

11. The object of Order VI Rule 17 of C.P.C. is that, the courts should try the merits of the cases that come before them and should consequently allow all amendments that may be

necessary for determining real question in controversy between the parties provided it does not cause injustice or prejudice to other side. It is well settled that while deciding an application for amendment of pleading, ordinarily the court should not refuse bona fide, legitimate, honest and necessary amendment. Conversely, it should not allow mala fide, dishonest or unnecessary amendment. In this case, even if the application is allowed, the defendant is having every opportunity to disprove that, the property of the plaintiff is not coming in Sy.No.289/1A. Mere amendment to the plaint would not prove the case of the plaintiff. The plaintiff has to establish by leading cogent evidence before the court to show that, she is in possession in Sy.No.289/1A. Under the above facts and circumstances of the case, this court is of the opinion that IA No.XI filed by plaintiff deserves to be allowed. Hence, I proceed to pass the following;-

**:- O R D E R :-**

I.A.No.XI filed by the plaintiff u/Order VI Rule 17 of CPC is hereby **allowed on cost of Rs.1,000/-**.

The plaintiff is permitted to carry out the amendment to the plaint as prayed for.

*(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced by me in the open court on this the 12<sup>th</sup> day of August- 2022.)*

I Addl. Civil Judge & JMFC.,  
Nanjanagudu