



Present : **Sri. Kishor Kumar M. B.A. LL.B.,**
I Addl. Civil Judge & JMFC.,
Nanjanagudu.

O.S./92/2015

(By Sri. **S.R.M.J.**, Advocate)

V/s

(By Sri. **S.B.P.**, Advocate)

I.A.No.IV/2021

Applicant/s: Abdul Rehaman Shariff
.....**Plaintiff**

Vs.

Opponent/s: Smt. Mahadevamma & Others
.....**Defendants**

Orders on I.A.No.IV

The applicant/plaintiff has filed I.A.No.IV 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, he has filed the present suit in respect of suit property for the relief of declaration and consequential relief of injunction. The plaintiff in his affidavit further stated that, at the time of preparing the examination-in-chief affidavit, some mistakes crept in the plaint came to the notice of his counsel. The said mistakes need to be corrected, otherwise, the plaintiff will be put to hardship and injury. Accordingly, plaintiff prays for allow the application.

3. Per contra, the defendant No.2 has filed detailed objections to I.A.No.IV contending that, application is not maintainable either in law or on facts. Defendant No.2 in his objections re-iterated the contents of written statement. The proposed amendment is going to change the nature of suit and cause of action. Further, the suit of the plaintiff is not maintainable in view of the Mohammadan Law. Hence, the application is liable to be dismissed. Accordingly, the defendant No.2 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:-

:- R E A S O N S :-

7. Point No.1:-The plaintiff has filed this suit against the defendant for the relief of declaration and injunction in respect of landed property bearing Sy.No.210 measuring 2 acres 20 guntas situated at Hallare village, Nanjanagudu taluk.

8. The plaintiff in his plaint pleaded that, Shukkur Sab in his lifetime bequeathed the property through registered Will dated: 14.12.1949. Now, by filing the present application, the plaintiff intends to delete the sentence 'bequeathed the property through the registered Will dated: 14.12.1949' and to substitute with the sentence 'settle the property through a Registered Settlement deed dated: 20.01.1956'. The plaintiff in support of his application has produced copy of registered settlement deed dated: 20.01.1956. The said deed discloses that, Abdul Rahima Sab @ Kencha Sab executed a settlement deed in favour of plaintiff and his younger brother and in favour of his 2nd son by Name Abdul Khuddus in respect of suit property and other properties.

9. Further, the plaintiff in his application seeking permission to amend the relief column by inserting the following relief 'to hold that, the registered sale deed dated: 14.12.1949 in favour of Nagappa, S/o. Kadappa by Noor Mohammad Sab is not binding on the plaintiff'.

10. As I said earlier, the defendant has filed detailed objections contending that, under Mohammadan Law, once any property is sold by any member of Muslim family, no one of his family can challenge the same. Hence, after lapse of so many years, the plaintiff now cannot contend that, the registered sale deed dated: 14.12.1949 is not binding on them.

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 take every possible contention that is available to him under Mohammadan Law and Limitation Act. Mere amendment to the plaint would not prove the case of the plaintiff. The plaintiff in support of his application has

produced copy of settlement deed. Hence, it can be held that, by oversight, the plaintiff in his plaint pleaded that, the plaintiff and his brother Abdul Wahaab Sab acquired the property by virtue of Will, instead of settlement deed. Under the above facts and circumstances of the case, this court is of the opinion that IA No.IV filed by plaintiff deserves to be allowed. Hence, I proceed to pass the following:-

:- O R D E R :-

I.A.No.IV 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 **26th day of August- 2022.**)*

I Addl. Civil Judge & JMFC.,
Nanjanagudu