



**IN THE COURT OF THE ADDITIONAL CIVIL
JUDGE AND JMFC., AT PERIYAPATNA**

Present: **Smt. Shwetha.J. B.Com, L.L.B.,**
Addl. Civil Judge & JMFC.,

Dated: this the 12th Day of March 2024

O.S.No.160/2014

PLAINTIFF : SRI. M.G.MOHAMMED KHASIM
V/s.,
DEFENDANTS : SRI. JAMIYA MASJID
AND OTHERS

IA.No.XV

APPLICANT/
PLAINTIFF : SRI. M.G.MOHAMMED KHASIM
[By Sri.GG Adv.,]
V/s.,
OPPONENT/
DEFENDANTS : SRI. JAMIYA MASJID
AND OTHERS
[D1,3 to 5 by Sri.PMR.,Adv.,]
[D2 by Sri.MCH.,Adv.,]

Provision under which IA is filed	Order 6 Rule 17 r/w Section 151 of CPC
Reliefs sought	Amendment of plaint
Date of filing of application	03.11.2023
Application No.	15
Date of filing objections	13.12.2023
Date of order	12.03.2024

ORDERS ON IA.No.XV

When the matter posted for further plaintiff evidence, the learned counsel for plaintiff filed this application u/O VI Rule 17 r/w Section 151 of CPC to permit him to amend the plaint.

2. In the accompanying affidavit, the plaintiff has sworn to the effect that he has filed the suit for bare permanent injunction. The defendants have filed written statement contending that they are the owners of suit property and have made counter claim regarding the suit property. After conclusion of evidence, when the case posted for judgment, the learned predecessor by contending that there is a cloud over the suit property and framed additional issue as to maintainability of the suit. As the burden is on the plaintiff to prove his case, the proposed amendment is just and necessary to adjudicate the matter in dispute. Hence prayed to allow the application.

3. On the other hand the counsel for the defendants has filed objections contending that when the case posted for judgment on 23.03.2021, this court came to the conclusion that there is strong dispute about the title and framed the additional issue. In the event of allowing the present application, the same will change the nature of suit. In order to prove the additional issue, the present case is posted for plaintiff evidence. In order to drag the proceedings, the present application came to be filed. Hence prayed to dismiss the application.

4. Heard arguments of learned counsels for the plaintiff as well as the defendants.

5. Under such circumstances, the following points do arise for my consideration;

**“Whether the application filed u/O
VI Rule 17 r/w Section 151 of CPC
deserves to be allowed?”**

6. My finding to the above point is in the **“Affirmative”** for the following;

REASONS

7. Admittedly the plaintiff has filed the suit for bare permanent injunction. After the conclusion of the evidence on both sides, the when the matter posted for judgment, an additional issue was framed by my learned predecessor as “1. Whether the suit for bare injunction without seeking the relief of declaration is maintainable?”

8. It is pertinent to mention herein that after filing of the suit, the defendants have strongly disputed as to the title of the plaintiff in respect of suit property. It is settled law that when the defendant filed his written statement denying the title of the plaintiff and setting up a clear and specific case of title in himself, the plaintiff can act for amendment of the plaint to convert the suit into one for declaration and injunction as per the observation made in the case of Anathulla Sudhakar Vs., P.Buchireddy. Hence the plaintiff is entitle to convert the suit for declaration.

9. During the course of arguments, the learned counsel for the plaintiff has argued that the suit is filed for bare permanent injunction, for which he has restricted the pleadings for the said relief. When the court has framed additional issue in respect of maintainability of suit without seeking declaration, he has no other option to amend the pleadings as required for declaration suit. As such prayed to allow the application to amend the pleadings as well as relief. On the other hand the learned counsel for defendants has argued that in the event if the plaintiff is permitted to amend the plaint, the nature of suit will change and the plaintiff has filed the present application causing delay.

10. In view of the above said settled law, the argument of defendants cannot be accepted. In so far as delay and amendment is concerned, the learned counsel for the plaintiff has relied on the rulings reported in ILR 2002 KAR 5055 in between Sampath Kumar Vs.,

Ayyakannur. In the said ruling, the Hon'ble Apex Court at para 9 has made observations as follows;

“9. Order 6 Rule 17 of CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pretrial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment”.

11. In view of above preposition of law and in order to avoid from instituting a new suit seeking the relief of declaration and permanent injunction on the same basic facts as pleaded in the plaint seeking the relief of issuance of permanent prohibitory injunction and which is pending, it is just and necessary to allow the present application for amendment.

12. In LIC of India Vs Sanjeev Builders Private Limited, the Hon'ble Apex Court has also held that;

“In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

13. Therefore for the afore-said reasons, I answer this point in the **Affirmative** and I proceed to pass the following:

ORDER

The IA.No.XV filed by the plaintiff u/O
VI Rule 17 r/w Section 151 of CPC is hereby
allowed with costs of Rs.2,000/-.

(Dictated to the Stenographer on computer, then corrected,
pronounced and then signed by me in the open Court on this the 12th Day
of March 2024)

(Shwetha.J)

Addl. Civil Judge and JMFC,
Periyapatna.