

Dated 13.07.2017

ORDER ON I.A.No.VII

The instant application is filed by the plaintiffs under order VI Rule 17 of CPC with a prayer to permit them to amend the plaint as sought in the application.

In support of the application the plaintiff No.3 has sworn to the affidavit contending that, they have filed the suit for partition and separate possession over the suit schedule property and due to typographical mistake para No.5 and 7 was typed instead of para No.8 and 9 and during the pendency of the suit the defendant No.5 has sold 17 guntas of land out of the plaint schedule property in favour of defendant No.12 through the sale deed dated 12.11.2014. Therefore, he has contended that, the proposed amendment 3, 5 and 6 are very much necessary to adjudicate the issue and thereby prayed to permit them to amend the plaint as sought.

On the other hand the defendants have filed their objection contending that, the application is not maintainable either law or on the facts of the case and that the application is not made at the proper time and no proper reasons are made out to allow the application and thereby prayed to dismissal of the application with exemplary cost.

Heard from both side and perused the materials available on record.

The points that arise for my consideration are:

1. Whether the plaintiff has made out ground to allow the instant application as sought for?

2. What order?

My findings to the above points are hereunder:

Point No.1: "**Affirmative**"

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

REASONS

Point No.1: The present suit is filed by the plaintiff for partition and separate possession against the defendants claiming 1/27th share over the suit schedule property. The plaintiffs have come up with the instant application contending that, the numerical para-5 and 7 in page No.5 of the plaint was been wrongly typed instead of para 8 and 9. They have also sought to amend certain averments with regard to the defendant No.5 having sold 17 guntas of land in favour of defendant No.12 as per the sale deed dated 12.11.2014 and has contended that, it is part and parcel of the plaint schedule property. He

has also contended that, the sale is hit by Section.53 of T.P Act. Therefore, he is intending to implead the said amendment in the plaint. They have also sought additional relief seeking for declaration as the sale deed executed by the defendant No.5 in favour of the defendant No.2 is not binding on them.

It is pertinent to note that, the present suit is filed on 8.04.2014 and as per the plaintiff's case the sale deed in favour of defendant No.5 is executed on 12.11.2014. No doubt the instant application is filed on 8.12.2016, but it is clear that, the defendant No.5 has sold a portion of schedule property after the institution of the suit i.e., during the pendency of the suit. Admittedly, it is a subsequent event, it is very much necessary to implead the said facts in the present case so as to decide the case effectively. Admittedly, by amending the plaint no hardship or prejudice will be cause to the defendants. That apart a property involved in the sale deed is the suit schedule property which required to be impleaded in the suit. Which could also be said that the subsequent purchaser is also a necessary party to the suit. To avoid any multiplicity of proceedings and to adjudicate the matter effectively and properly, I come to conclusion that, the amendment sought by the plaintiff would help the court to decide the case

completely. In view of the discussion made above I answer point N.1 in "**Affirmative**"

Point No.2 In view of the above discussion, I proceed to pass the following:

ORDER

The I.A.No.VII filed by the plaintiff under order VI Rule 17 of CPC is hereby allowed.

The plaintiff is permitted to carryout the amendment as sought for.

For amendment and for amended plaint by.

(JAI SHANKAR.J)
Civil Judge and JMFC
Periyapatna