

ORDER ON I.A.No.IX.

This is the I.A.No.IX filed by learned counsel for the applicant/plaintiff under Order VI, Rule 17 R/w Section 151 of C.P.C., seeking amendment in the plaint.

2. In the I.A.No.IX it is stated for the reasons mentioned in the accompanying affidavit that, the suit filed for the relief of permanent injunction. the defendants are taken the law into own motion they are dig the lavatory pit on the eastern side of suit schedule property and also grown some trees on encroached portion. Further stated that, the said fact of encroachment has came to his knowledge while P.D.O has measured the suit schedule property. Further stated that, the defendants knowing about suit is pending for adjudication and without leave of the court, they are dig the lavatory pit on the eastern side of suit schedule property and also grown some trees on encroached portion and hence Mandatory Injunction to remove the illegal construction is just and necessary, since that the amendment sought is based on the subsequently changes in the suit same is permissible under the law. Further stated that, the proposed amendment will not change the nature of the suit and cause of action and not amounts to introducing a new case. If this application is not allowed he will be put irreparable loss and injury which cannot be compensated. Accordingly, prays to allow the I.A.No.IX.

3. On the other hand, learned counsel for the opponents/defendants has not filed any objections to the application.

4. Heard and perused the materials available on record.

5. Now the points that will arise for my consideration are:-

1. Whether the applicant/plaintiff has made out sufficient grounds to allow the I.A.No.IX?

2. What order?

6. My answers to the above points are:-

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

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

REASONS

7. **Point No.1:-** The suit is filed for the relief of permanent injunction. Now the case is posted for further chief of P.W-1. At this stage applicant/plaintiff has filed the above application for amendment of the plaint.

8. After going through the contents of affidavit of I.A.No.IX and after hearing the arguments of both sides on I.A.No.IX, I have gone through the Order VI, Rule 17 R/w Section 151 of C.P.C., which reads as under:-

"17. Amendments of Pleadings: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made

as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, 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 trial."

9. From a bare perusal of Order VI Rule 17 R/w Section 151 of the Code of Civil Procedure, it is clear that the Court is conferred with power at any stage of the proceedings to allow alteration and amendments of the pleadings if it is view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order VI Rule 17 R/w Section 151 of the code, however, provides that no application for a amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

10. It is now well settled by various decisions of the Hon'ble Supreme Court of India as well as Hon'ble High Courts that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment is not a bonafide one. In this connection the Hon'ble Privy counsel in the case of Ma Shwe Mya -V/s- Maung Mo Hnaung (AIR 1922 PC

249) held that, "All rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoy and should always be liberally exercised, but nonetheless no power has yet been given to enable one to distinct cause of action to be substituted to another, nor to change by means of amendment, the subject matter of the suit."

11. On careful scrutiny of the above said provisions of law and decisions, it is crystal clear that, the Court may, at any stage of the proceedings, allow either of the parties to alter or amend their plaint provided such amendment is just and necessary for the purpose of determining the real questions in controversies between the parties. Therefore, in the instant case, the suit filed by the plaintiff for the relief of permanent injunction. It is also the burden of the plaintiff to prove his case. Therefore, the sufficient opportunities are to be given to him. Moreover, the plaintiff has intended to amend the plaint on the ground that, during the pendency of the above suit the defendants are dig the lavatory pit on the eastern side of suit schedule property and also grown some trees on encroached portion. Hence, it is necessary to amend the plaint. Order VI, Rule 17 R/w Section 151 provides amendment of the pleadings. By amendment of 2002, a proviso has been added that amendments should generally be allowed at the stage of pretrial of the suit. But, subsequent thereto, the Court must be satisfied has to why the pleadings could not be brought in, unless

it was based on subsequent developments. The issue involved herein is being considered by the Court everyday. Amendments in the pleadings may generally be allowed and the amendment may also be allowed at a belated stage. However, it should not cause injustice or prejudice to the other side. Hence, the amendment sought should be necessary. The plaintiff is the master of the case and he has every liberty to set up the case and conducting the case. The Hon'ble Supreme Court of India in several cases held that should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. Therefore, in my opinion, if this I.A. is allowed on cost, no hardship will be caused to the defendants and it does not change the nature of the suit. Therefore, in the interest of justice and equity and also in order to avoid the multiplicity of the proceedings it is necessary to allow the I.A.No.IX. In these circumstances, this Court has no other option except allowing the I.A.No.IX. **Accordingly, Point No.1 is answered in the affirmative.**

12. **Point No.2:-** In view of my findings on Point No.1, I proceed to pass the following:-

:: O R D E R ::

I.A.No.IX filed by the applicant/plaintiff under Order VI, Rule 17 R/w Section 151 of C.P.C., is hereby **allowed** on cost of Rs.200/-.

The applicant/plaintiff is hereby permitted to amend the plaint as prayed in I.A.No.IX.

For amendment of plaint and amended plaint.

Call on:

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.**