

ORDERS 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 of C.P.C., seeking amendment in cause title the name of 1st defendant and in the plaint schedule as mentioned in the I.A.No.IX by allowing the application.

2. In the I.A.No.IX it is stated for the reasons mentioned in the accompanying affidavit that, the plaintiff has filed the above suit for declaration, permanent and mandatory injunction in respect of the suit schedule property. The above case is now set down for cross-examination of P.W-1. In the meantime he came to know that, in the schedule of the plaint, the boundaries of suit schedule property was wrongly entered by oversight. The said mistake done due to bonafide reason but not intentional one. If the required amendment is not made, he will be put to untold hardship and inconvenience. On the other hand, if the amendment is made no prejudice will be caused to the defendant. Accordingly, prays to allow the I.A.No.IX.

3. On the other hand, learned counsel for the defendants have submitted that, they have no objection to allow the above application.

4. Heard the arguments and perused the materials available on record.

5. The following points are arisen for my consideration:-

1. Whether the applicant/plaintiff has made out sufficient grounds to allow the above application?

2. What order?

6. My findings to the above points are as follows:-

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

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

REASONS

7. **Point No.1:-** The suit is filed for the relief of declaration, mandatory injunction and permanent injunction. Now the case is posted for cross-examination of P.W-1. At this stage plaintiff has filed the above application for amendment of the cause title and plaint schedule. On the other hand, the defendants have not filed objection to the above application.

8. After going through the contents of affidavit of I.A.No.IX and also after hearing the arguments of both sides on I.A.No.IX, I have gone through the Order VI, Rule 17 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 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 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 his pleadings 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 declaration, permanent and mandatory 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 schedule on the ground that by oversight the plaintiff has mentioned wrong boundaries to the suit schedule property. Hence, it is necessary to amend the suit schedule for the purpose of determining the real questions in controversies between the parties. Order VI, Rule 17 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 as 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. In the present case the plaintiff has intended to amend the suit schedule which have been found subsequent to the above suit. Hence, the amendment sought should be necessary for the purpose of determining the real question in controversy between the parties. On the other hand, the defendants have not objected the said application. The plaintiff is the master of the above case and he has every liberty to set up the case and conducting the case. Hence, he has intended to amend the suit schedule property. 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, no hardship will be caused to the opponent/defendant and it does not change the nature of the suit. Therefore, it is necessary in the interest of justice and equity to allow 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 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 and amended plaint.

Call on: 04.06.2022

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