

ORDER ON I.A.No.XI.

At the stage of further evidence of plaintiff this I.A.No.XI filed by learned counsel for the applicant/plaintiff No.1 under Order VI, Rule 17 R/w Section 151 of C.P.C., seeking amendment in the plaint schedule.

2. In the I.A.No.XI it is stated for the reasons mentioned in the accompanying affidavit that, the suit filed for the relief of partition and separate possession in respect of suit schedule properties. At the time of filing of the suit she has not served the documents and details of the application schedule properties i.e., now the same is added in the plaint schedule properties as item No.3 & 4. At the time of cross examination of P.W-1 it is elicited that, the application schedule properties are the ancestral properties of the plaintiffs and defendants. As such the above said properties was not inserted at the time of filing of the suit. Hence, it is necessary to insert item No.3 & 4 of the schedule properties in the plaint schedule. Further, 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 they will be put irreparable loss and injury which cannot be compensated. Accordingly, prays to allow the I.A.No.XI.

3. On the other hand, the opponent/defendant No.1 has filed objection to the above application on the ground that, the plaintiffs are intend to insert the above said properties are already partitioned between plaintiff and defendants. The plaintiffs and defendants are in joint possession of item No.2 and the plaintiffs

and defendant No.2 are in separate possession of item No.1 of the suit schedule property. Hence, the question of insertion of the properties does not arise at all. Therefore, the said application filed by the plaintiffs is not maintainable either in law or on facts. Hence, prays to reject the application.

4. Heard the arguments of both side and perused the materials available on record.

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

1. Whether the applicant/plaintiff No.1 has made out sufficient grounds to allow the I.A.No.XI?
2. What order?

6. My answers to the above points are:-

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 partition and separate possession. Now the case is posted for further evidence of plaintiff. At this stage applicant/plaintiff No.1 has filed the above application for amendment of plaint schedule.

8. After going through the contents of affidavit of I.A.No.XI and after hearing the arguments on I.A.No.XI, 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 enjoyed 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 plaintiffs for the relief of partition and separate possession. It is also the burden of the plaintiffs to prove their case. Therefore, the sufficient opportunities are to be given to them. Moreover, the plaintiffs have intended to amend the plaint schedule on the ground that, at the time of filing of the suit she has not served the documents and details of the application schedule properties to their advocate, now the same is added in the plaint schedule properties as item No.3 & 4. At the time of cross examination of P.W-1 it is elicited that, the application schedule properties are the ancestral properties of the plaintiffs and defendants. As such the above said properties was not inserted at the time of filing of the suit. Hence, it is necessary to insert their ancestral properties in the plaint schedule. The said mistake is not bonafide one. Hence, it is necessary to incorporate properties in the plaint 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. Hence, the amendment sought should be necessary for the purpose of determining the real question in controversy between the parties. The plaintiffs are the master of the case and they have 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 defendant 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.XI. In these circumstances, this Court has no other option except allowing the I.A.No.XI. **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.XI filed by the applicant/plaintiff No.1 under Order VI, Rule 17 R/w Section 151 of C.P.C., is hereby **allowed on cost of Rs.300/-**.

The applicant/plaintiff No.1 is hereby permitted to amend the plaint schedule as prayed in I.A.No.XI.

For Amendment, amended plaint and fresh valuation memo. .

Call on: 06.02.2024.

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