

On perusal of entire records it is disclosed that, on 02.03.2023 the Lrs of defendant No.5 has filed memo stating that, I.A No.XI under Order 7 Rule 14(3) of C.P.C may be allowed on cost.

Hence, I.A No.XI is allowed on cost of Rs.100/-.

The plaintiffs are permitted to produce the documents.

ORDER ON I.A.No.XII.

At the time of cross examination of P.W-1 this is the I.A.No.XII 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 of the plaint.

2. In the I.A.No.XII it is stated for the reasons mentioned in the accompanying affidavit that, the suit filed for the relief of Partition and Separate Possession. At the time of filing of the above suit the proposed amendment was not within the knowledge of the plaintiffs. Due to oversight the said mistake was occurred. The proposed amendment is very important to determine real questions in controversy between them and the rival defendants. 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.XII.

3. On the other hand, the Lrs of the defendant No.5 have objected the above said I.A. on the ground that, the amendment sought by the plaintiff only after thought, when the defendants have submitted true facts on partition deed effected between defendant No.1, 5 and Puttamadamma, that Khatha changed by virtue of partition deed. The plaintiffs, defendant No.1 and his wife sold the share allotted to them as per the Sale Deed dated:05.02.2007 and 24.11.2015 in respect of item No.1 and 2 of the suit schedule properties. Further contented that, remaining properties belongs to defendant No.5. After the demise of defendant No.5, the suit schedule properties have succeeded by these defendants and they are the absolute owners of the suit schedule properties. Further, the plaintiffs are filed the above application with an intention to drag the proceedings. Hence, the application is not maintainable either on law or on facts. Accordingly, prays to reject the I.A.No.XII with costs.

4. Heard both sides 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.XII?
2. What order?

6. My answers to the above points are:-

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

Point No.2 : As per final 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 amendment of plaint and cross examination of P.W-1. At this stage applicant/plaintiff No.1 has filed the above application.

8. After going through the contents of affidavit of I.A.No.XII and also objections and also after hearing the arguments of both sides on I.A.No.XII, 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 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 insert the para No.2(a) in the plaint on the ground that, at the time of filing of the above suit the proposed amendment was not within the knowledge of the plaintiffs. The said mistake is bonafide one. Hence, it is necessary to amend the plaint. Further, the plaintiffs have intended to amend the item No.2 of the suit schedule property on the ground that, defendant No.1 was constructed the house in the item No.2 of the suit schedule property and the said fact came to the knowledge of the plaintiff while defendant No.1 was suffering from liver infection which was necessitated him to sell the said property. Moreover, 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. 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 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. On the other hand, the legal heirs of defendant No.5 contented that, they are the absolute owners of the suit schedule properties. The said fact required full fledged trial. Moreover, if the plaintiff is permitted to amend the plaint as prayed in the application no hardship will be caused to the defendants. Further, the contention of defendants required full fledge trial. 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.XII. In these circumstances, this Court has no other option except allowing the I.A.No.XII. **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.XII 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.500/-**.

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

For amendment of plaint and amended plaint.

Call on:09.11.2023.

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