

ORDERS ON IA-23 & 24

The defendant No-7 has filed IA No-23 U/o 16 Rule 6 of CPC seeking direction to Tahasildar Raichur to produce the documents in RRT No:7/16-15 and RRT No:7/14-15. In support of it, he has filed his affidavit stating that the original documents filed by the plaintiffs are in the said RRT case, he has already produced certified copies of it, even then originals are necessary for effective adjudication of the case, hence he prayed to allow the application.

2. He also filed IA No-24 U/o 6 Rule 17 of CPC seeking to amend his written statement by adding paragraph No-9 (a) to 9 (c) and intended to plead some more facts with regard to case by way of amendment. In support of it, he has filed his affidavit stating that the proposed amendment is very much necessary to adjudicate the matter in controversy. The said fact was came to his knowledge very recently as he happens to be employee in the Tahasil office at Raichur. Proposed amendment will not change the nature of the suit and same will assist the court in resolving real controversy involved in the suit.

3. To oppose both applications, the plaintiffs have filed their objections contending that both applications are not maintainable either in law or on facts. The defendant No-7 has not shown due diligence in not pleading proposed amendment earlier, therefore they prayed to reject both the applications.

4. Heard both sides, perused the materials available on record.

5. Now, the points that would arise for the consideration of this court are as follows:-

- 1) Whether the defendant No-7 has made out ground to allow IA No-23?
 - 2) Whether the defendant No-7 proves that proposed amendment is necessary to resolve controversy between the parties?
 - 3) What order?
6. My findings to the above points are as under:
- Point No-1: In the negative
- Point No-2: In the affirmative
- Point No-3: As per final order for the following:

REASONS

7. **Point No-1:** The defendant No-7 has filed IA No-23 seeking direction to Tahasildar Raichur to produce original documents in RRT case. In the affidavit the defendant No-7 himself stated that he has already filed certified copies of the documents available in the RRT case and now he is seeking direction to issue summons to Tahasildar Raichur to produce original documents.
8. The advocate for the plaintiff vehemently argued that certified copies have been produced by the defendant No-7 it is not necessary to call entire file from the Tahasildar Raichur. He also contended that the defendant No-7 is not certain about which file he intends to call for before the court, because he has mentioned RRT No.7/16-15 and RRT No.7/14-15 in the IA whereas he mentioned RRT No.80/14-15 in his affidavit. Therefore, he contended that the present application has been filed only to cause delay and hamper the progress of the case.

9. On perusal of the IA as well as affidavit annexed with IA No-23 contention of the advocate for the plaintiffs is appears to be probable. The defendant No-7 being Sheristedar in Tahasil office Raichur, intentionally might have mentioned different numbers of RRT case in IA as well as affidavit so that even though the application is allowed concerned Tahasildar will not able to trace out case papers which he has to produce before the court. When defendant No-7 himself has produced certified copies of the said documents then they being public documents can be looked into by the court during trial. Therefore at this juncture question arises is it necessary to call for original documents?.

10. This suit is of the year 2009 and we are in the year 2017. So, attitude of the defendant No-7 is not appreciable. Even the application filed by him is not in accordance with the Rules of Practice and he has not bothered about procedure established under the said provision and not mentioned the double cause title in the IA. Apart from that, he has shown different RRT No in IA as well as affidavit, therefore he ought to have verify before signing the affidavit, therefore attitude of the defendant No-7 shows that he has filed this application only to drag the matter. Hence it is deserves to be rejected with imposing certain costs. Therefore, I answer point No-1 in the negative.

11. Point No-2: The advocate for the defendant No-7 contended that the defendant No-7 has came to know about the documents produced by the plaintiffs in the RRT case before Tahasildar Raichur very recently because, he happens to be the employee in the said office. Therefore he could not file the proposed amendment

application at the earliest point of time. The proposed amendment does not change the nature of the suit, but it will assist the court to resolve real controversy between the parties. Therefore, amendment is based upon the documents available on record, as such it is necessary to allow the same.

12. Per contra, the advocate for plaintiffs contended that the defendant No-7 being Sheristedar in the Tahasil Office Raichur and every mutation file moves through him, as such he must have knowledge about filing of the application, but he did not take any action against the application at the earliest. He has filed the objection to the mutation proceedings, through his mother and wife's brother on 27-1-2015, but he has filed the present application on 8-9-2016, therefore, there is no due diligence on the part of the defendant No-7 and he has not given any satisfactory explanation for the same. Hence the amendment sought for by the defendant No-7 is not maintainable in law, as such he prayed to reject the same.

13. Having heard the arguments from both the sides on this point and on perusal of the records admittedly this amendment application is filed by the defendant No-7 and trial is not yet over. Though PW-1 in witness box he was not yet cross-examined. It is needless to say that if the amendment is allowed, nature of the suit will not be changed because amendment sought for is in the written statement.

14. As per the settled principle of law, pretrial amendment should be allowed and in a recent decision of Hon'ble Apex Court in **Ramesh Kumar Agarwal V/s Rajamala Export Private Ltd., & others 2012 S.C.C.R 425**, it is held that generally amendment

applications are to be allowed. Here if the amendment is allowed, absolutely nature of the suit will not be changed and admittedly the amendment sought for by the defendant No-7 in his written statement and he only mentioning certain facts with regard to certain documents pertains to the suit. Under such circumstances, if the amendment as sought for is allowed no harm or prejudice would be caused to the plaintiffs, on the other hand the plaintiffs will also get an opportunity to file their rejoinder to the amended portion of the written statement. Therefore, the defendant No-7 has made out grounds to allow the application. Hence I answer Point No-2 in the affirmative.

15. Point No-3: For the foregoing reasons, I proceed to pass the following:

ORDER

I.A.No-23 is hereby rejected with costs of Rs.250/- payable to the plaintiffs.

IA.No-24 filed U/o 6 Rule 17 of CPC is hereby allowed.

The defendant No-7 has to amend and furnish amended written statement on or before:

Addl. Senior Civil Judge Raichur.