

Orders on IA.No.8 filed under Order VI Rule 17

R/w Section 151 of C.P.C.,

The applicant/plaintiff No.1 has filed the application to permit her to amend the plaint as detailed in the application.

2. In the affidavit annexed to the application, the plaintiff No.1 has stated that, the plaintiffs have filed the above suit for the relief of declaration of their title over the suit schedule property acquired under the family settlement deed dated:14.06.1992. Further the plaintiff came to know that the defendant No.2 suppressing the family settlement arrived between her and defendant No.1 has filed a suit in O.S.No. 13/2008 before the court for partition and separate possession and obtained Ex-part decree on 30.07.2011 in respect of very suit schedule property. Further the plaintiff came know the same only after the defendant No.2 filed written statement. Further stated that, the O.S.No.13/2008, which was tried ex-parte and the said defendant No.2 has been awarded a Decree against the plaintiff No.1 in the said case. Furthermore, neither the plaintiff nor the other plaintiffs in this case have been issued notice or summons in the said

O.S.No.13/2008 and the case has been tried and decreed ex-parte without any intimation to the defendants in that case.

3. Further it is stated that, the Hon'ble Court has passed orders and has decreed against her in the above-mentioned case, it now put the plaintiffs in a Catch-22 situation such that even if this Hon'ble Court rules in favorable of the plaintiff in this case, the defendants will still be able to claim their right over the suit schedule property with the Order and Decree from the said O.S.No.13/2008. Further it is stated that, at the time of drafting the plaint, the plaintiffs were not aware of such a case having been filed against them and thus the above-mentioned points were not added to the Plaint and hence this plaintiff seek the amendments as detailed in the annexed application. Further, the present suit for declaration of the rights of the parties over the suit schedule property and the very Ex-parte Decree obtained by the defendant No.2 in O.S.No.13/2008, in respect of the very same suit schedule property, suppressing the rights of the plaintiffs over the suit schedule property has to be dealt in this case on merits, as otherwise the judgment and decree passed in the case on merits will suffers from equity and justice and may leads to challenge the same in appellate court. Hence, to avoid all these complications and multiplicity of proceedings, the plaintiff No.1 may be permitted to amend the plaintiff as per proposed amendments to meets the interest of justice.

4. Further it is stated that, upon the perusal of the written statements and during preparing evidence, this plaintiff came to know of the said case against them, upon which this plaintiff immediately has filed this application at this early stage to rectify the same to conclude the matter on merits. If the present application is allowed no prejudice would be caused to the defendants, on the other hand if the same application is rejected irreparable injury would be caused to them, which cannot be compensated in any manner. The proposed amendment will not change the nature of the suit or cause of action and on other grounds prays to allow the application.

5. The opponent/defendants No.1 to 3 has filed statement of objections contending that, the application filed by the plaintiff No.1 is not maintainable and contended that, the application filed by the plaintiff is barred by limitation. Further it is contended that, the amendment sought by the plaintiff is not maintainable and contended that, in OS.No.13/2008 decree dated:30.07.2011 the plaintiff was also a party and remains exparte. Hence, now they cannot claim the prayer as sought for. Further it is contended that, in the Hon'ble Senior Civil Judge, Ramanagara in OS.No.157/2005 both the parties have filed the compromise petition and in the said petition Vinaykumar who is the son of the applicant Lakshamma was also a party. Hence, plaintiff at this juncture has no right to claim the amendment. Further it is contended that, on 14.06.1992 suit schedule property has come through the Panchayath Parikath

which is not true. Further it is contended that, no partition has taken place in the family of the plaintiffs and defendants. Further it is contended that, earlier to the instant suit two suits were filed between the parties but, both parties have not stated about the Panchayath Parikath. Now, plaintiffs have by creating the Panchayath Parikath has claiming their right. Further it is contended that, plaintiffs have sold the few properties which are not come through Panchayath Parikath. Hence, prayed to dismiss the application.

6. Heard and perused materials on record.

7. The suit filed by the plaintiff against the defendants for the relief of declaration and possession in respect of the suit schedule properties. The plaintiff No.1 by filling the application wish to insert information in the plaint and filed the present application. The defendants No.1 to 3 has filed the detailed objection to the above application.

As per Order VI Rule 17 of CPC., the Court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

8. In this case the trial has commenced and when stage is for arguments the instant application came to be filed by the plaintiff No.1 to add the additional information as prayed in the application at the belated stage. Further it is to be noted here that, the counsel for plaintiff also to canvas his arguments. Now, if amendment is allowed entire case is going to be changed and moreover the this case comes under more than 10 years old case list. Therefore, this Court is of the view that, the applicant is not diligent in conducting the case. Therefore, I proceed to pass the following:-

ORDER

IA No.8 filed by the
applicant/plaintiff No.1 U/o VI Rule
17 R/w Sec.151 of CPC., is hereby
rejected.

For arguments.

**1st Addl., Senior Civil Judge & JMFC.,
Ramanagara.**