

**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC, AT
CHANNAPATNA.**

**PRESENT:SRI.MAHENDRA.M B.A, LL.B.,
C/C Addl.Civil Judge & JMFC.,
Channapatna.**

Dated this 5th day of March-2021

O.S. NO.84/2018

PLAINTIFFS : Smt.Marivenkatamma and Another
-Vs-
DEFENDANTS : Sri.Muniyaiah and Others,

I.A.No.III

APPLICANTS

PLAINTIFFS :1. Smt.Marivenkatamma,
W/o Late Kattaiah @ Chikkachannaiah,
Aged About 60 years,
2. Sri.Kattaiah,
W/o Late Kattaiah @ Chikkachannaiah,
Aged About 60 years,

R/at Muniyappanadoddi Village,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.S.S.N., Adv)

OPPONENTS /
DEFENDANTS:

Sri.Muniyaiah and Others,
(By Sri.B.G., adv.,)

ORDERS ON IA.No.III

The learned counsel for the plaintiffs have filed an I.A.III under order VI rule 17 r/w Section 151 C.PC seeking permit to amend the plaint as sought for.

2. The plaintiff No.2 sworn to an affidavit in support of I.A No.III and stated that, the plaintiffs have filed this suit for the relief of permanent injunction. Before the passing the order an I.A. No.I u/O 39 Rule 1 and 2 the defendants are construct the building by encroached the suit schedule property. The defendants illegally possession in the proposed "B" schedule property. The subsequent events for proposed amendment is necessary. The proposed amendment is not change the cause of action or not change the nature of the suit. The proposed amendments are necessary. If this application is not allowed, the plaintiffs will be put to irreparable loss and injury which can not be compensated. Hence filed this application and prayed that allow the I.A No.III.

3. The counsel for the defendants filed an objection to I.A No.III and contended that, the application filed by the plaintiffs is not maintainable under the law or on facts, the same is dismissed in limine. This court has already dismissed the interim injunction

application. This case posted to evidence of plaintiffs side on 11.02.2020. The plaintiffs have not lead their evidence, but the present application for drag on the proceedings. The defendants already completed the construction, the said defendants taken by the defendants in their written statement on 23.06.2018, till today the plaintiffs not taken any steps in this stage the plaintiffs filed the alleged application. The proposed amendment is change the nature of the suit. The plaintiffs have not produced the supporting documents along with this I.A. **Hence prayed that dismiss the I.A No.III with cost.**

4. Now the following points are arise for consideration of this court:-

POINTS

1. Whether the grounds made out for amend the plaint as sought for in the I.A No.III ?
2. What order?

5. Heard the arguments from the counsel appearing on behalf of the parties to the suit.

6. This court has perused the material available on record and this court answer the above points as follows:-

- | | |
|---------------------|---|
| Point No.1:- | In the affirmative |
| Point No.2:- | As per final order
for the following:- |

REASONS

7. **Point No.1:-** The plaintiffs have filed this suit for the relief of permanent injunction in respect of suit schedule properties. This suit posted for evidence from plaintiffs side. In this stage the plaintiffs have filed the present application for amend the plaint.

8. **Under order 6 rule 17 of CPC as follows-**

“Amendment 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 as commenced, unless the court come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

9. In the present suit, the defendants took the contention that, already construction was over, hence the present suit for permanent injunction is not maintainable. The plaintiff also admitted that, now the defendants construct the building in the

some extent of the suit schedule properties. Hence the suit for permanent injunction is not maintainable.

10. The Contention of the defendants that, before institution of the suit they are completed the construction of building, the plaintiffs have stated that, after filing of the suit the defendants have complete the construction work. It is decided at the time of the judgment.

11. As per the contention of plaintiffs that, the defendants after filing of the suit constructed the building in the proposed "B" schedule properties, it is subsequent events. In the subsequent events the amendment of pleadings are necessary. The plaintiff intended to insert the one para in the plaint and also inserted the "B" schedule properties and also implead the relief of declaration and recovery of possession. The said proposed amendment are necessary to effective adjudicate the suit. To avoid the multiplicity proceedings and interest of justice and equity the proposed amendments are necessary. **With these reasons this court has Answer the Point No.1 in the Affirmative.**

12. **Point No.2:-** For the above reasons this court proceed to the pass the following:-

ORDER

I.A. No.III u/O VI rule 17 R/w section 151 of CPC filed by the plaintiffs is here by allowed with cost of Rs.500/-.

The plaintiffs have permitted to amend the plaint as prayed in I.A. No.III and file amended plaint.

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 5th day of March-2021).

Sd/-
C/C Addl.Civil Judge & J.M.F.C.
Channapatna.

Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

I.A. No.III u/O VI rule 17 R/w section 151 of CPC filed by the plaintiffs is here by allowed with cost of Rs.500/-.

The plaintiffs have permitted to amend the plaint as prayed in I.A. No.III and file amended plaint.

R/by 07.04.2021.
Sd/-
C/C Addl.Civil Judge & JMFC.,
Channapatna.