

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

PRESENT: SRI.MAHENDRA.M B.A, LL.B.,
Prl.Civil Judge & JMFC.,
Channapatna.

Dated this 19th day of July-2021

O.S. NO.105/2018

PLAINTIFFS : Sri.C.S.Puttamadegowda & Others

-Vs-

DEFENDANTS : Smt.Ammannamma & Others

I.A.No.VIII

APPLICANT

PLAINTIFF NO.1 : Sri.C.S.Puttamadegowda

V/s

OPPONENTS/

DEFENDANTS: Smt.Ammannamma & Others

ORDERS ON IA.No.VIII

This is an application filed by the plaintiff No.1 under order VI rule 17 of C.PC for amend the plaint as sought in the IA.No.VIII.

2. **The averments of the affidavit filed in support of the application are as follows:-**

This is a suit filed by the plaintiffs against the defendants for the relief of partition and separate possession in respect of suit schedule properties. The plaintiffs have not given the information regarding the suit. Meanwhile the plaintiff No.2 and 3 have given the information regarding pleadings. The plaintiff No.1 personally not given the information to previous counsel. After two years the plaintiff No.2 and 3 are left out from unity. Subsequently the plaintiff No.1 appointed the new counsel. The plaintiff No.1 dispossession in the suit schedule property since from 40 years. He not grow any crops in the suit schedule property. The plaintiff No.1 will be ready to prove the contention of the pleadings. **Hence, allow the IA.No.VIII.**

3. The counsel for the defendant No.5 has filed an objection to I A.VIII and contended that, the application filed by the plaintiff No.1 is not maintainable either in law or on facts the same is liable to be dismissed in limine. The defendant No.5 further contended that, the plaintiffs have filed this suit in the year 2018. The plaintiff and defendants are members of joint family. The plaintiff No.1 is the elder member of that family. There is no partition taken place between plaintiffs and defendants. The defendant No.1 already filed the application for seeking amend the written statement, the same was allowed.

Since 2018 the plaintiff No.1 not attempt to any amendment to the plaint as sought for. Only intention to draggon the proceedings this application filed by the plaintiff No.1. Hence, IA.No.VIII is deserve to be dismissed with cost.

4. Heard the arguments and perused the records.

5. The following points are arise for consideration of this court:-

POINTS

1. Whether the applicant/plaintiff No.1 proves that, IA.No.VIII is deserves to be allowed?

2. What order?

6. The answer of this court to the above points are as follows:-

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

REASONS

7. **Point No.1:-** The plaintiff No.1 has filed ppresent application seeking amendment of plaint and inserted the some pleadings. Now the case is posted for evidence of plaintiffs. At this stage the plaintiff No.1 filed present application. The defendant No.5 filed an objection to the application contended that the application filed by the plaintiff No.1 is not maintainable either in law or on facts.

8. The plaintiffs filed this suit against the defendants for the relief of Partition and Separate Possession over the suit schedule properties. This suit filed in the year 2018. The defendant No.1 filed her written statement on 07.06.2018. The present application filed by the plaintiff No.1 on 05.08.2020. The plaintiff No.1 filed the present application after laps of 3 years. The plaintiff No.1 stating that in this application the proposed amendment is only for mistake of earlier counsel.

9. 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.

10. The plaintiff No.1 stated in his application, he has not given the information to previous counsel in respect of suit, subsequently is has appointed new counsel. by mistake of the earlier counsel the facts not been narrated in the plaint. The proposed amendment the plaintiff No.1 inserted one paragraph regarding joint family status and nature of the possession over the suit schedule property. The proposed amendment is contradiction to original pleadings.

11. This court relied upon one decision of Hon'ble Apex Court reported in, 2012(2) AIR Kar162(Supreme Court):

J.Samuel and others V/s Gattu Mahesh and others

“In this case Hon'ble Supreme court defined the word “due diligence in para No 15 of the said judgment” in the given facts, there is a clear lack of due diligence and the mistake committed certainly does not come with in the per-dim of typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger but usually excludes errors of ignorance. Therefore, the act neglecting to perform an action which one has on obligation to do cannot be called

as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence where in such amendment is simplemindedly barred under the court”

12. The plaintiff No.1 not shown his due diligence. After laps of 3 years the present application filed by the plaintiff No.1 is not maintainable. There is no sufficient explanation given by the plaintiff No.1 to file the present application for laps of 3 years. The plaintiff No.1 is not entitled for relief sought for in his IA.No.VIII. Hence, IA.No.VIII is deserve to be rejected. Hence, answer the Point No.I in the Negative.

13. **Point No.2**:- For the above reasons I proceed to the pass the following:-

ORDER

The IA.No.VIII filed by the plaintiff No.1 under order VI rule 17 of CPC is hereby rejected, subject to cost of Rs.200/-.

(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 19th day of July-2021).

Sd/-
(Mahendra. M)
Prl Civil Judge & J.M.F.C.,
Channapatna.

Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

The IA.No.VIII filed by the plaintiff No.1 under order VI rule 17 of CPC is hereby rejected, subject to cost of Rs.200/-.

For plaintiffs evidence R/by
25.08.2021

Sd/-

Prl. Civil Judge & JMFC.,
Channapatna.