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**IN THE COURT OF THE II ADDL. CIVIL JUDGE
AND JMFC, KANAKAPURA.**

:Present:

Kum.Parvathi.V, B.A.L, LL.B.
II Addl. Civil Judge & J.M.F.C.,
Kanakapura.

Dated : This the 15th day of April 2023

O.S. No.218/2019

Plaintiff : Sri.Thulasi Naika, dead by his LRs.
Smt.Bhagtyamma and others.

- V/s -

Defendants : Sri.Narayananaika and others.

* * * *

I A No.VI

Sri.Thulasi Naika, dead by his LRs.
Smt.Bhagtyamma and others. : Applicants/Plaintiffs.

-V/s-

Sri.Narayananaika and others. : Opponents/defendants.

Order on I.A.No.VI

1. I.A. No.VI filed by the applicants/plaintiffs under Order 6 Rule 17 r/w Sec.151 of C.P.C. seeking amend the plaint as sought in the application.

2. In accompanying affidavit the plaintiffs submitted that the plaintiffs are the absolute owner of the suit schedule property. The plaintiffs file the suit against the defendants for relief of permanent injunction and other reliefs. The suit properties are acquired through family partition. Meanwhile the 1st defendant alienate he suit schedule properties through illegal built the shop in the suit schedule properties and by illegally encroach the suit schedule properties. The proposed amendment is very much necessary for proper adjudication of the right of the parties. Hence, prays to allow the application.

3. On the contrary, the defendant No.1 filed objection and contended that the proposed amendment in the plaint and prayer is totally irrelevant and inconsistent with each other. Now the plaintiffs filing this application instead of filing her examination in chief and drag the proceedings. Now at this belated stage, the amendment sought by the

plaintiffs is not maintainable. Among all these grounds, defendant No.1 pray to reject the application.

4. Heard the argument both sides. In view of the materials before court and rival contention arisen by the parties, the following points arisen for my consideration :-

POINTS

1. Whether the plaintiffs made out grounds to allow the application under Order 6 Rule 17 of CPC ?

2. What order?

5. My answers to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : As per final order
for the following ;

REASONS

6. Point No.1 : Perused the records of the case, the plaintiffs have filed this suit against the defendants for relief of permanent injunction of the suit schedule property. The plaintiff has filed the said application at the stage of hearing on I.A., as per Order 6 Rule 17 of CPC amendment of pleadings provides that the court may at any stage of the proceedings allow either party to alter or

amend their 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 that matter before the commencement of trial.

7. The plaintiff seeking amendment in the plaint as sought in the application. The proposed amendment is very much necessary for proper adjudication of the matter. Hence, if the said application is allowed it will not changes the nature of the suit. Amendment need to be allowed to minimize the litigation. Even it is equally settled principle of law that while allowing the amendment of pleadings, liberal approach can be granted and cannot be dismissed on technicality. Hence, in the view of above discussion and fact and circumstances of the case it is just and necessary to allow the application. Hence, this court **answer point No.1 in the Affirmative.**

8. Point No.2 : For above said reasons of point No.1, following :

ORDER

The I.A.No.VI filed by the plaintiffs under Order 6 rule 17 is here by allowed with cost of Rs.100/-.

Directed to plaintiffs amend the original plaint before C.M.O. and furnish amendment plaint.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 15th day of April 2023)

(PARVATHI.V)

II Addl. Civil Judge & JMFC,
Kanakapura.

