

IN THE COURT OF THE II ADDL.CIVIL JUDGE J.M.F.C.,
AT KANAKAPURA.

Dated: This 17th day of March 2020.

Present: Sri.Krishnamurthy.N., *B.A., LL.B.*,
II Addl. Civil Judge & JMFC.

OS No. 197/2007.

Plaintiffs : Shambulingegowda and another

-V/S-

Defendant: : M.Gurumadappa

IA

Plaintiffs/Applicants: Shambulingegowda
S/o Chikkamallegowda,
Aged about 32 years.

2. Maramma
W/o Chikkamallegowda,
Aged about 60 years.

Both are R/at
Doddakabballi Village,
Kodihalli Hobli,
Kanakapura Taluk.

//versus//

Defendant/ Opponent: M.Gurumadappa
S/o Late Madegowda
@ Kamsale Channaiah,
R/at Doddakabballi Village,
Kodihalli Hobli,
Kanakapura Taluk.

**ORDER ON IA UNDER ORDER 6 RULE 17 R/w SEC 151 OF
CPC FILED BY THE PLAINTIF**

1. The instant IA under Order 6 Rule 17 r/w Sec. 151 of CPC has been filed by the plaintiffs seeking proposed amendment sought to be inserted as additional para 1(a) in the plaint as well as amendment in the plaint schedule.

2. One Shambulingegowda the plaintiff No.2 shown affidavit to the effect that due to ignorance and non availability of order of the Hon'ble Hight Court passed in LRF No.13/1975-76 could not be pleaded in the plaint at the time of filing the suit. After getting the said fact he has come up with this application. The amendment sought to be inserted in the plaint are very much essential and necessary for the plaintiffs to prove their case. No prejudice will be caused to the defendants. On the other hand, much injustice caused if this application is not allowed. Hence, prays to allow the application.

3. In opposing said application counsel for the defendants has filed objection statement contending that the facts pleaded which sought to be inserted by way of amendment are well within the knowledge of plaintiffs. Despite it, after lapse of considerable period for ten years the plaintiffs have come up with this application with an intention to drag on the proceedings thereby harass the defendants and further contended that after completion of plaintiffs side evidence this application came to be filed which cannot be entertain and the plaintiffs have not made out valid grounds to satisfy ingredients U/s 6 Rule 17 of CPC and thus the application liable to be dismissed. Per contra alleging other allegations defendants pray to dismiss the application with cost.

4. Heard and perused. Now the points would arise for my consideration is as follows:-

1. Whether the plaintiffs have made out grounds that proposed amendment would be necessary for adjudication the matter in question effectively, hence, liable to be allowed?

2. What Order?

REASONS

5. The present instant application under Order 6 Rule 17 of CPC is filed by the plaintiffs to add additional para 1(a) in the plaint with respect to proceeding held before Hon'ble High Court of Karnataka in W.P. 8978/79 in relation to order passed in LRF No. 13/1975-76 dt: 10.07.1979 and also seeking deletion of Sy.No.7/4 measuring 1 acre 5 guntas and Sy.No.141/1 measuring 20 guntas and also deletion of boundary towards west in the plaint schedule.

6. The plaintiffs have filed this suit initially for declaration of ownership and consequential relief of injunction with regard to suit schedule property Sy.No.7/4 measuring 1 acre 5 guntas and Sy.No.141/1 measuring 1 acre 6 guntas having common boundaries. During proceeding plaint got amended for two times and proposed prayer of possession sought in the prayer column. Now the plaintiffs are seeking proposed amendment not only in the plaint averments pertaining to proceedings held in W.P. No. 8978/1979 but, also deletion of measurement as well as western boundaries in the suit schedule. It is pertinent to note that in the plaint the plaintiffs claim right over the suit schedule property based on occupancy right granted

in favour of plaintiffs father Chikkamallegowda under LRF No. 13/75-76 dt: 10.07.1979. So said aspect of the matter with regard to aforesaid proceedings were well within the knowledge of the plaintiffs even at the time of filing the suit. Apparently, the above said proceedings were held in between parties to the proceeding during the year 1979 itself. According to the plaintiffs the Land Tribunal at Kanakapura again passed an order dt: 13.08.1986 in LRF No. 13/17975-76 with regard to Sy.No.141/1, this fact has not been pleaded in the plaint at the time of filing the suit. What impediment caused for the plaintiffs in not mentioning about order dt: 13.08.1986 which passed by the Land Tribunal earlier, in the plaint has not been properly explained. It is settle that amended can be allowed even after the trial has commenced. If court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial as per order 6 Rule 17 of CPC. It is pertinent to note that the suit of the year 2007 and the present application came to be filed in the year 2018 after lapse of nearly above 10 years. Apparently, when the matter is posted for defendants evidence this application was filed by the plaintiffs. On perusal of record it discloses that xerox copy of order passed in LRF No. 13/1975-76 dt: 13.08.1986 was produced by the defendants by way of

filing memo dt: 27.11.2008. When such being the fact it cannot be held that plaintiffs were not aware of order passed dt: 13.08.1986 as contended. Therefore, the court opines that the plaintiffs are not in diligent prosecuting the case properly and as such, grounds urged in the application are not satisfied. Having considering the facts and circumstances of the case, the application deserves to be dismissed for the reasons stated above. Considering the old pendency of the suit of the year 2007 one or the other reason plaintiffs drag the proceeding. Hence, I answer Point No.1 in the **Negative**.

7. **Point No.2:** For the reason stated above, I proceed to pass following.

ORDER

Application under Order 6 Rule 17 r/w
Sec. 151 of CPC filed by the plaintiffs is
hereby dismissed with cost of Rs. 500/-.

**II Addl Civil Judge & JMFC.,
Kanakapura.**

Separate order signed and pronounced in open court.

ORDER

Application under Order 6 Rule 17 r/w Sec. 151 of CPC filed by the plaintiffs is hereby dismissed with cost of Rs. 500/-.

**II Addl Civil Judge & JMFC.,
Kanakapura.**