

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

PRESENT

SRI.MAHENDRA.M B.A, LL.B.,
II Addl.Civil Judge & JMFC,
Magadi

Dated this 5th day of September-2019

O.S. NO.269/2010

PLAINTIFFS : Sri.R.Ranganarasimhaiah

-Vs-

DEFENDANT : Sri.Thopaiah

I.A.No.XII

APPLICANT/

PLAINTIFF : Sri.R.Ranganarasimhaiah
S/o Late Rangaiah
Aged about 45 years,
R/at: No.S-256
13th Main,4th Cross,
Bharth Nagar II stage,
Magadi main Raod,
Bangalore-560-091

and also R/at: Gavinagamangala
Madbal Hobli, Magadi Taluk.

-V/s-

OPPONENT/

DEFENDANT : Sri.Thopaiah
S/o late Shambaiah
Aged about 45 years,
R/at: Gavinagamangala
Madbal Hobli, Magadi Taluk.

ORDERS ON IA.No.XII

This is an application filed by the plaintiff under order Vi rule 17 R/w Section 151 C.P.C seeking amend the plaint as sought in the IA.No.XII.

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

The plaintiff claim for damages at the rate of RS.50,000/- per annum from the date of the suit. This court order dated:10-11-2014 it attracts to stamp duty. The plaintiff preferred an writ petition No.397/2015 before the Hon'ble High court of Karnataka. The Hon'ble High court of Karnataka confirmed the order of this court. The plaintiff instead of seeking the prayer to enquire into mesne profits. This application is allowed not change the cause of action or

nature of suit. And the defendants will not be put to any hardship and injury. Hence, allow the application.

3. Application filed by the plaintiff is not maintainable either in law or on facts the same is liable to be dismissed in limine. The defendant further contended that, the prayer for grant of mesne profits is not maintainable in this suit, if at all the plaintiff is entitled for other reliefs plaintiff has to file a separate suit for the relief of mesne profits. There is no scope for the enquiry into mesne profits in this suit. The proposed amendment will change the nature of the suit, cause of action and will introduce a new case into present case on hand. Hence, application filed by the plaintiff is liable to be rejected with cost.

4. The following points arise for my consideration:-

POINTS

1. Whether the applicant/plaintiff prove that the application filed by him deserves to be allowed?
2. What order?

5. Heard the argument from the defendant side. The counsel for the plaintiff filed a written argument. This court perused the written argument filed by the counsel for the plaintiff and perused all the materials on record. I answer the above points as follows:-

Point No.1:- In the Negative

Point No.2:- As per final order

for the following:-

REASONS

6. **Point No.1:-** The plaintiff filed this suit against the defendants for the relief of declared that, the sale deed null and void and canceled, recovery of possession, damages, permanent injunction and other reliefs in respect of suit schedule property. The defendants appeared before this court and raised the objection regarding court fee. This court framed preliminary issue regarding valuation of suit property. This court reject the valuation slip filed by the plaintiff in this suit. The plaintiff preferred an appeal against the order of this court in WP No.397/2015 before the Hon'ble High court of Karnataka. The Hon'ble High court of Karnataka confirm the order of this court. The plaintiff not comply the order of this court dated:10-11-2014 till today. The plaintiff filed present application for amend the relief and inserted the new relief. The defendants are opposed to that application and filed their objection to IA.No.XII.

7. At the time of filing of the suit the plaintiff sought for the relief of damages at the rate of Rs.50,000/- per anuam from the date of the suit. The plaintiff filed the present application seeking insert the

prayer of mesne profits instead of damages. In this case the plaintiff already examined as PW-1 and got marked Ex.P1 to P9.

8. The term mesne profits relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The mean profits are nothing but a compensation that a person in the unlawful possession of others pay as to pay if or such wrong that, occupation to the owner of the property.

9. The plaintiff filed this suit in the year 2010 after 9 years from the date of institution of this suit. The plaintiff filed present application for amend the plaint. There is no explanation given by the plaintiff for delay. The plaintiff is not complied the order of this court for pay the sufficient court fee. The intention of the plaintiff to drag on the proceedings. The application filed by the plaintiff is not maintainable, there is no ground to allow the application. Hence, IA.No.XII is deserve to be rejected. Accordingly answer the point No.1 in the Negative.

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

ORDER

The IA.No.XII filed by the plaintiff under order VI rule 17 R/w section 151 of CPC is hereby rejected with cost of Rs.300/-.

(MAHENDRA. M)
II Addl Civil Judge & J.M.F.C
Magadi.05-09-2019