

07.07.2022

**ORDERS ON IA No.10 WHICH IS
FILED BY THE PLAINTIFF UNDER
ORDER 6 RULE 17 R/W. SECTION
151 of CPC**

By way of this application the plaintiff is seeks permission of this court to bring the proposed amendment stated in the application in the plaint.

2. Application is supported with the affidavit of the plaintiff. Wherein, it is stated that, the incorporation of the proposed amendment in the plaint is verymuch necessary. Due to, typographical error same was not added in the original plaint and rectification of the said mistake by bringing amendment to the plaint is necessary. If the proposed amendment is allowed, no hardship or inconvenience will be caused to the defendant. On the other hand, if the plaintiff is not permitted to incorporate the proposed amendment, then the plaintiff suffers hardship and injustice. With all these averments, plaintiff prays to grant the relief as prayed for in the application.

3. Application is resisted by the defendants by filing objection to it in detail. Wherein, they have denied the application averments as false and frivolous and that the proposed amendment will change the entire nature of the suit and as such same is not permissible in the eyes of law.

4. it is also contended that the plaintiff is in a habit of filing similar type of applications with an intention to

drag on the proceedings. If the proposed amendment is permitted, it will take away the defense raised by the defendant. With all these contentions, the defendants pray for dismissal of the applications with costs.

5. Heard on the application. Perused the pleadings and the entire case papers carefully. Points that arise for the consideration of this court are as under:

1. Whether the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and as such the applicant/ plaintiff has made out sufficient and valid grounds to allow the application and to grant the relief as prayed for?

2. What order?

6. My findings on the above points are as under:

Point No.1: In the Affirmative,

Point No.2: As per the final orders for the following..

REASONS

7. **Point No.1:** Suit is one filed seeking relief of permanent injustice, mandatory injustice and for the other reliefs. The defendants have contested the suit by filing their written statement in detail. Record reveals that the present application came to be filed when the case is stood posted for leading further examination in chief of PW.1. It is also clear from the records that, by virtue of orders of this court on

similar type of application the plaint has been amended on earlier occasions.

8. To decide the application of hand this court has to keep in mind the proviso appended to the provision of law i.e., Order 6 Rule 17 of CPC. In order to avail the benefit of permission to amend the plaint, the applicant/plaintiff must show that inspite of due diligence, he could not have raised the matter (proposed amendment) before the commencement of the trial.

9. I have carefully gone through the pleadings of the parties. It is not in dispute that the defendants have filed their written statement in the year 2015 itself. It is at the said undisputed point of time they have even taken up a contention that "The plaintiff is well aware of the fact that there is no existing common oni or path way as alleged in the 'B' schedule property by the plaintiff". In this application, the plaintiff is seeking permission of this court to bring out the proposed amendment in the plaint after lapse of almost 07 years from the date of filing of the written statement. This establishes that there is no due diligence on the part of the plaintiff for the reason that to plead regarding existence/non-existence of oni no special knowledge is required as if at all there is oni in existence as alleged, same could not have existed over night or disappear. Moreover, the proposed amendment is intended to be brought on record after examination in chief of PW.1 which is not permissible in the eyes of law. Hence, holding that no due diligence has been shown by the plaintiff to grant the relief as prayed for in the application and also upon consideration of the fact that the

proposed amendment is not at all necessary to determine the real question in controversy between the parties I proceed to answer the point No.1 in the **Negative**.

10.**Point No.2** : In view of my answer to the point No.1 as above, I proceed to pass the following:

ORDER

IA No.10 filed by the plaintiff under Order VI Rule 17 is rejected with cost of Rs.250/-.

For further examination of chief of PW.1.

Call on

Prl. Civil Judge & JMFC.,
Bhadravathi.Dt.07.07.2022.