

ORDERS ON IA No.V

The plaintiff filed this IA under Order VI Rule 17 R/w Section 151 of CPC by praying to amend her plaint.

2. Under the proposed amendment the plaintiff is intending to amend the measurement of the suit property as 50 x 25 feet instead of 20 x 25 feet.

3. In her affidavit accompanying to the IA, the plaintiff has stated that while preparing for her arguments on IA No.I she has noticed that, the actual measurement of the suit property is 50 x 25 feet as per the

sale deed and due to typographical error the said measurement is wrongly entered as 20 x 25 feet. She has stated that, due to mistake she had filed similar application for amending her plaint by stating that suit property is measuring 30 x 25 feet and the said application is allowed. She contending that, the filing of IA No.IV by her and the measurement stated therein is nothing but a bonafide mistake and not done in deliberate. She contending that, the proposed amendment will not change the nature of the suit or cause of action. She further stated that, if the proposed amendment is not allowed she shall be put to great hardship. Hence, the plaintiff prays to allow the IA.

4. Per contra, the counsel for the defendant No.2 filed his objection and praying to dismiss the said IA on the ground that the plaintiff filed false suit without knowing the exact measurement of the alleged suit property. He contending that, the plaintiff herself is having ambiguity in respect of measurement of the suit property and hence the amendment cannot be permitted. They also contending that the plaintiff has already filed similar application on 10.08.2024 and filed this application during the pendency of earlier one. Hence,

the defendant No.2 prays to dismiss the IA as untenable.

5. Heard both sides.

6. Perused the records.

7. It is found that, the plaintiff filed this suit for *Injunction Simplicitor*. According to the original plaint averments, the suit schedule property is a site property measuring 20 x 25 feet and situated within Town Municipality, Bhadravathi. It is the case of the plaintiff that, her husband Yalappa had purchased the suit property under a registered sale deed dated 9.3.2000. The plaintiff claims that, she is in possession of the suit property as on the date of the filing of this suit. It is further alleged by the plaintiff that, since the defendants tried to interfere with her possession and to encroach the suit property, she filed this suit.

8. Per contra, the defendants contesting this suit on the ground that the plaintiff filed this false suit by claiming that the suit property is existing within their property measuring 10 guntas in Sy.No.95/1 and 95/2.

9. The record would reveal that, on 10.08.2023 the plaintiff filed similar application under Order 6 Rule 17 of CPC and prayed to rectify the measurement of

suit property as 30 x 25 feet instead of 20 x 25 feet mentioned in the original plaint. It is undisputed that, the said IA was allowed by this court on 29.09.2023 and plaintiff has also filed the amended plaint accordingly.

10. Such being the case, the plaintiff again come up with this application for amendment of her plaint. Now she is contending that as per the original sale deed the measurement of the suit property is 50 x 25 feet and, therefore, she prays to permit the proposed amendment.

11. It is trait of law that, the amendment of pleadings shall be allowed liberally prior to commencement of trial of the suit. Undisputedly, the trial in the present suit is not yet commenced. The suit is still in its preliminary stage and pending for consideration of an application filed for temporary injunction. Hence, the application for amendment of pleadings by either party shall be considered liberally.

12. It is true that, the plaintiff come up with simultaneous applications for amendment of her plaint and to rectify the measurement of the suit property. Since it will be the burden lies only on the plaintiff to prove actual measurement of the suit property during the trial of the suit, allowing the proposed amendment will neither cause

any injustice to the defendants nor will change the nature of the suit. Thus, the present IA deserved to be allowed subject to payment of cost as the plaintiff has wasted precious time of this court by filing successive application for amendment of her plaint. Accordingly, the following:

ORDER

The IA No.V filed by the plaintiff under Order VI Rule 17 R/w Section 151 of CPC is allowed on cost of Rs.500/-.

The plaintiff is permitted to amend her plaint as prayed for and shall carry out the amendment in the original plaint and to file amended plaint on or before next date of hearing.

Cal on 20.12.2024.

Prl.Civil Judge & JMFC
Bhadravathi