

IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC., GUBBI

Present: Sri. Ganesha N. M.A. LL.B.,
Addl. Civil Judge and JMFC.,
Gubbi.

Dated this 4th July of 2018

O.S. No. 51/2007

Plaintiffs: Hanumanthaiah and others
Vs.

Defendants: Ramaiah and others

ORDERS ON I.A. No. 19 FILED UNDER ORDER 6 RULE
17 OF C.P.C.

The plaintiffs have filed the instant application under order 6 Rule 17 of CPC seeking permission of this court to amend the plaint by inserting proposed amendment.

2. In the affidavit accompanying to the application it is stated that during the pendency of the suit 5th defendant has executed registered GPA in favour of defendant No.6 without the permission of this court. It is further stated that defendant No.6 by virtue of said registered GPA has created sale deed dated 10-03-16 and has changed katha and pahani into his name illegally. It is further stated the facts

regarding execution of above said illegal GPA and sale deed is necessary to adjudicate the suit on hand to avoid multiplicity of litigations. Therefore prays to allow the application.

3. Per contra, the defendants have filed their objections, wherein it is stated that the plaintiff has filed the application which is not maintainable under law as the trial has already commenced and the proposed amendment is not necessary to adjudicate the matter effectively. It is further stated that the proposed amendment to the prayer column is pertaining to a declaratory prayer which is not maintainable in the eye of law. It is further stated that the plaintiff is indirectly seeking to amend the declaratory prayer indirectly which amounts to cancellation of sale deed executed in favour of defendant No.6 just to avoid court fee and nature of the suit will be changed and trial to be commenced afresh which amounts to delay in delivering justice. Hence prays to dismiss the application.

4. Heard the counsel for plaintiff and defendant and perused the pleadings, IA No.19, affidavit and other material on record.

5. The points that arise for my consideration are:

1. Whether the application filed U/o 6 Rule 17 of CPC is deserves to be allowed?

2. What order?

6. My answer to above points are as under:

Point No.1 – Affirmative

Point No.2- As per final order for the following

REASONS

7. Point No.1– it is stated that during the pendency of the suit 5th defendant has executed registered GPA in favour of defendant No.6 without the permission of this court. It is further stated that defendant No.6 by virtue of said registered GPA has created sale deed dated 10-03-16 and has changed katha and pahani into his name illegally. It is further stated the facts regarding execution of above said illegal GPA and sale deed is necessary to adjudicate the suit on hand to avoid multiplicity of litigations.

8. The plaintiffs are intended to amend the plaint by inserting the proposed amendment which is pertaining to subsequent fact that the execution and its concomitants of registered GPA dated 19-11-15 executed by defendant No.5 in favour of defendant NO.6 without the permission of the court and registered sale deed dated 10-03-16. The intended fact which is projected by the plaintiffs are to be proved by the plaintiffs. The proposed amendment will not change the nature of the suit or cause of action. The defendants have every opportunity to file additional written statement or every chance to cross examine the plaintiffs. Moreover the proposed amendment will avoid multiplicity of proceedings. The amendment sought is only on the basis of subsequent developments that have taken place during the pendency of the suit. The proposed amendment is imperative, appropriate and necessary for effective adjudication of the case. The proposed amendment constitutionally and fundamentally would not change the nature of the case and the character of the suit. Moreover the proposed amendment is necessary for the purposes of

determining real questions or controversies between the suit parties. Hence I answered point No.1 in the affirmative

10. **Point No.2-** In view of above discussion, I proceed to pass the following:

ORDER

I.A.No.19 filed by the applicant/plaintiff under order 6 Rule 17 of CPC is hereby allowed.

Plaintiffs are permitted to amend the plaint.

Plaintiffs are hereby directed to amend the plaint and to file amended plaint.

(Dictated to Stenographer directly and typed by her, script corrected, signed and then pronounced by me in the open court on 4th July 2018)

**(Ganesha N.)
Addl. Civil Judge and JMFC.,
Gubbi.**