

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 25th January of 2019

O.S. No.50/2016

Plaintiffs: Rajanna and others
Vs.

Defendant: Channabasamma

ORDERS ON I.A. No. 2 FILED UNDER ORDER 6 RULE 17
of CPC

The plaintiffs have filed the instant application under order 6 Rule 17 of CPC seeking an order of this court to permit them to amend the plaint.

2. As stated in the affidavit the matrix facts which constrain the plaintiffs to file the instant application are that the plaintiffs have instituted a suit against defendant for declaration of their title and for perpetual injunction. Due to bonafide mistake and error committed at the time of typing by over right it was pleaded that the mother of the plaintiffs had purchased the suit schedule property under

sale deed dated 25-07-1968. It is further stated that the plaintiffs have traced the original document and they came to know that their mother had acquired the suit schedule property through grant made by the Govt. It is further stated that it is very much necessary to insert the facts pertaining to grant and delete the fact pertaining to sale deed in order to prove the title of the plaintiffs over the suit schedule property. Hence the plaintiffs pray to allow the application.

3. Per Contra the defendant has filed her objections wherein it is stated that the plaintiffs have averred in the plaint that their mother had purchased the property and now they are saying that the suit schedule property was granted to their mother by the Govt. It is further stated that the plaintiffs have earlier averred that the property is situated at Adaluru hobli but now the plaintiffs are intended to insert Neralekere, Nittur hobli, in the place of Adaluru hobli. Hence the defendant prays to dismiss the application with exemplary costs.

4. Heard the counsel for plaintiffs and defendant and perused the pleadings, IA No.2, affidavit and other materials on record.

5. The points that arise for my determination are:

1. Whether the application filed by the plaintiffs 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- The plaintiffs have filed the suit against the defendant for declaration of title and for perpetual injunction. The plaintiffs have filed the instant application seeking amendment to the plaint. The proposed amendment reads as follows:

“ In Para No.2 Line No.6

To delete- purchase under the registered sate deed
dated 25-07-68

To add- Grant made by the Govt. in the year 1977

In same para, line No.8

To delete the word – purchase

To add the word- grant

To delete para No.3

In Para No.5 line No.5

To delete- Hodalur hobli

To add- Neralekere, Nittur hobli”

As discernible from the above portion, the proposed amendment is pertaining to source of the suit schedule property and the place where the suit schedule property is situated. It is settled principle of law that every projected fact must be proved by the party who has projecting the said fact. Without proof, the pleadings remain valueless. As per plaintiffs they recently came to know, that the source of the suit schedule property is not the sale deed but it is by grant made by the Govt. in the year 1977. the proposed amendment is a necessary and invaluable fact in order to decide the title of the plaintiff over the suit schedule property. The defendant has every opportunity to file additional written statement in order to defend the proposed amendment. Any amount of inconvenience can be

compensated by imposing cost. Hence this court opines that the proposed amendment is very much necessary in order to determine the real question between the suit parties, since the instant matter is pertaining to declaration of title and perpetual injunction. Hence this court inclines to allow the application. Hence I answered point No.1 in the affirmative.

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

ORDER

I.A.No.2 filed by the applicants/plaintiffs Under Order 6 Rule 17 of CPC is hereby allowed on cost of Rs.200/-.

Plaintiffs are permitted to amend the plaint.

Plaintiffs are hereby directed to carryout amendment and to furnish amended plaint.

(Dictated to the Stenographer, transcribed and typed and print out taken by her, corrected by me and then pronounced in the open court on this 25th day of January 2019.)

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