

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
GUBBI

Present: Sri. Lokesha, B.A., LL.B.,
Prl. Civil Judge (Jr. Dvn) &
JMFC., Gubbi

Dated this the 3rd October of 2016

O.S.No.165/14

Plaintiff:- M.P. Nagaraju

Vs.

Defendants:- Paramashivaiah and others

Applicant:- M.P. Nagaraju

Vs.

Opponents:- Paramashivaiah and others

ORDERS ON I.A. No.X FILED UNDER ORDER
6 RULE 17 OF CPC FILED BY PLAINTIFF

Plaintiff has filed this application with a request to permit the plaintiff to amend plaint as sought for in I.A.

2. In the affidavit accompanying this application plaintiff has stated that he has filed this suit for partition and separate possession of his share to suit schedule properties. It is further stated that at the time of filing of the suit, he has sought for cancellation of registered gift deeds. But the defendants are entitled to gift their share of properties and share of plaintiff is not bound by gift deed. Through this proposed amendment plaintiff

intends to delete the 2nd prayer and to permit to insert “ the gift deed dated 6.2.2014 and 29.04.2014 are not binding on the share of plaintiff”. Hence [prayed for allow the application.

3. On the other hand defendant has filed objection contending that defendants have filed application under Sec.38(1) of Karnataka Court fee and Suit valuation Act r/w Sec.151 of CPC for rejection of Ex.P.5 and P.6 marked in this case. It is further stated that application filed by plaintiff is not maintainable. It is further stated that plaintiff has filed this application in order to harass the defendants. Hence, they prayed for dismissal of this application.

4. Heard arguments and perused documents produced by both sides.

5. The points that arise for my consideration are;

- 1 Whether application filed by plaintiff under order 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 - In Affirmative

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

REASONS

7. **Point No.1-** Admittedly this suit is filed by plaintiffs against defendant for the relief of partition and separate possession. The consequential relief sought for by the plaintiff is to cancellation of

registered gift deeds dated 6.2.2014 and 29.04.2014. Defendants have filed application under Sec.38 of Karnataka Court Fee and suit valuation Act to reject Ex.P.5 and P.6 on the ground of non-payment of proper court fee. On filing of this application by the defendants plaintiffs come up with this application for amendment of plaint to permit him to delete the 2nd prayer mentioned above and permit the plaintiff to insert 2nd prayer as “ gift deeds dated 6.2.2014 and 29.04.2014 are not binding on the share of the plaintiff.” The defendants have filed formal objection to this application.

8. Now the question for consideration whether proposed amendment will alter the nature of the suit or cause of action or whether it amounts to withdrawal of admission. At this juncture it is useful to refer decision reported **in 2016 (5) Karnataka Law Journal 126 in the case of K.T. Ramaiah V. K.T.Venkataswamy and others**. In this decision their lordship have referred the judgment of Hon’ble Supreme Court of India reported in **2009 AIR SCW 6644 in the case of Revajeetu Builders and Developers v. Narayanaswamy** and sons and others wherein their lordship have observed that

“ Factors to be taken into consideration while dealing with applications for amendments;

63. On critically analyzing both the English and Indian cases some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

1) whether the amendment sought is imperative for proper and effective adjudication of the case?

2) Whether the application for amendment is bonafide or malafide?

3) The amendment should not cause such prejudice to other side which cannot be compensated adequately in terms of money.

4) Refusing amendment would in fact lead to injustice or lead to multiple litigation.

5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under order 6 rule 17. These are only illustrative and not exhaustive.”

9. In the present case on hand if this court permits the plaintiffs to amend the plaint as sought for no injustice would be caused to other side. As I have already noted above proposed amendment will not alter the nature of the suit or cause of action. So in view of principle laid down in the above decision application filed by plaintiff for amendment of plaint is to be allowed. Hence I answer point No.1 in Affirmative.

10. Point No.2- In view of discussion made on point No.1, I proceed to pass the following;

ORDER

I.A.No.X filed under Order 6 Rule 17 of CPC by plaintiff is hereby allowed with cost of Rs.200/-.

Plaintiff is permitted to amend plaint as sought for in I.A. and directed to file amended plaint so as to enable the defendants to file additional written statement.

(Dictated to Stenographer, transcribed and typed by her, script corrected, signed and then pronounced by me in open court on 3rd October of 2016.)

(Lokesha)
Prl. Civil Judge & JMFC.,
Gubbi.