

**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC AT MADHUGIRI**

Dated this the 02nd day of July 2020

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, L.L.B (Hons.)

Prl. Civil Judge & JMFC,
Madhugiri

O.S.No.405/2015

PLAINTIFFS : 1. H. Byrappa S/o Henjerappa
aged about 55 years

2. Lakshamma W/o H. Byrappa
aged about 48 years

Both are R/o Byravanagara
Sunnavadi majara, Puravara
Hobli, Madhugiri Taluk.

(By Sri N.D.L., Advocate)

Vs/-

DEFENDANT : Jayaramaiah S/o Byrappa
aged about 60 years
R/o Byravanagara
Sunnavadi majara, Puravara
Hobli, Madhugiri Taluk.

(By Sri G.S.S.R., Advocate)

I.A.No.VI

Applicant : Lakshamma 2nd Plaintiff

Vs/-

Opponent : Jayaramaiah Defendant

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ORDERS ON I.A. No.VI FILED BY PLAINTIFFS
UNDER ORDER 6 RULE 17 OF C.P.C

This is an application filed by plaintiffs praying this court to amend the plaint prayer portion.

2. The amendment sought is :

“In the prayer portion before the relief (a) relief (A) declare that the plaintiffs are the owners, in possession and enjoyment of the suit schedule property, is to be added in the plaint portion.”

3. In the affidavit annexed to the application, plaintiff No.2 averred that they have filed this suit against defendant for the relief of permanent injunction in respect of suit schedule property and after contest, defendant has denied the right of plaintiffs over suit schedule property. At the time of filing of suit, they have filed suit for mere

permanent injunction and now it is imminent on their part to insert prayer of declaration, which is not intentional but bonafide. If the proposed amendment is allowed, no harm or injury will be caused to other side and amongst these grounds, prayed to allow the application.

4. On the contrary, defendant filed objections to the application contending that plaint averments do not contain any pleadings with regard to title of plaintiffs over suit schedule property and application for amendment has to be rejected. The application is filed only to drag on the proceedings and if application is allowed, nature of suit and cause of action will change and amongst other grounds, prayed to dismiss the application with costs.

5. Heard, perused the records placed before the court.

6. The points that arise for my consideration are as under :

1. Whether plaintiffs have made out sufficient grounds to allow the application ?

2. What order ?

7. My findings to the above points are as under :

Point No.1..... In the Affirmative,

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

REASONS

8. **POINT No.1** : Admittedly, this suit came to be filed by plaintiffs in the year 2015 against the defendant for the relief of bare injunction restraining defendant, his agents, servants or anybody claiming under him from interfering with plaintiffs possession and enjoyment of suit schedule property. Now when the case is posted for hearing on another application filed under Order 11 Rule 14 of CPC, the present application came to be filed by plaintiffs praying to amend the prayer portion of the plaint by inserting the relief of declaration. It is the contention of plaintiffs that defendant after appearing through his counsel has

denied their right over suit schedule property, hence it is necessary to insert the prayer of declaration in the prayer portion.

9. On the contrary, defendant contended that there are no pleadings with regard to title of plaintiffs over suit schedule property in the plaint and application is filed only to drag on the proceedings.

10. Now it is the contention of plaintiffs that as defendant has denied their right over suit schedule property, the proposed amendment is necessary, which is an subsequent event. The contention of defendant that there is no pleading with regard to title of plaintiff over suit schedule property in the plaint is not tenable, as it is the look out of plaintiff when he has come to the court seeking a certain relief and same can be considered at the time of passing final judgment. Moreover in written statement filed by defendant, he has taken specific contention that suit of plaintiffs for mere injunction is not maintainable, hence the question

of defendant taking by surprise does not arise at all.

11. Moreover, in this case, evidence has not yet commenced. If the proposed amendment is allowed, defendant would get an opportunity to file their defense and also cross-examine plaintiffs on the point of amendment.

12. If the proposed amendment is allowed, the same would be necessary for determining real questions in controversy between the parties, as defendant in his written statement has denied the ownership of plaintiffs over the suit schedule property. If the proposed amendment is allowed, it would avoid multiplicity of proceedings and same may be allowed subject to question of limitation and subject to payment of court fee for the relief sought in the amendment. Moreover the application is filed by plaintiffs before the commencement of trial, which also shows the conduct of plaintiffs in prosecuting the case. Sufficient believable grounds have been made out by plaintiffs to allow the

application. Hence for the above said reasons, I answer Point No.1 in the '**Affirmative**'.

13. **POINT No.2** : For the reasonings and findings given to point No.1, I proceed to pass the following :

ORDER

I.A. No.VI filed by plaintiffs under Order 6 Rule 17 of CPC is hereby allowed on payment of costs of Rs.500/- to defendant, subject to payment of lawful court fee on the amendment.

The plaintiffs are hereby directed to amend the plaint within 14 days from the date of this order.

(Typed to my dictation by the Stenographer directly on computer, then corrected, printout taken, signed and then pronounced by me in the open court on this **02nd day of July 2020**)

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Madhugiri.

