

KATK710001702020



**IN THE COURT OF THE ADDL.CIVIL JUDGE AND JMFC.,
PAVAGADA.**

**Present: Smt.Akhila.H.K., B.A.LLB.
Addl. Civil Judge & JMFC,
Pavagada.**

Dated: This the 6th day of July, 2022.

O.S. No.42 /2020

Plaintiff : Shakonthamma,
[By Sri.N.N.R., Advocate]

V/s

Defendants : Anandakumar and others
[By Sri.M.B, Advocate]

Parties to IA. No.II

Applicant/Plaintiff : Shakonthamma,

V/s

Opponents/Defendants : Anandakumar and others

ORDERS ON I.A.No.II.

1. The counsel for the Applicant/Plaintiff has filed this application under Order 6 Rule 17 of C.P.C., praying to amend the plaint as detailed in the application.

2. This application is supported by affidavit of the plaintiff wherein it is stated that, she has filed this suit for permanent injunction with respect to suit schedule property. She has stated that at the time of filing of the suit by oversight and by mistake she has wrongly inserted the schedule which is mentioned in I.A accompanying this application. She came to know about the said mistake recently through her counsel. Hence, she has filed this application to delete the same in the schedule. She has stated that no harm would be caused to the other side if the application is rejected whereas plaintiff will be put to irreparable loss and injury if the application is rejected. Further she has stated that the proposed amendment will not change of the nature of the and not introduce a new case. Hence, she has requested to allow the I.A.

3. Per-Contra, the defendants have contested this application staunchly by filing objections inter alia contending that, the application is not maintainable either in law or facts. The proposed amendment will change the nature of the suit and also the cause of action. It is submitted that the proposed amendments are an after thought i.e., this

application is filed after filing of the written statement and also after submitting arguments on I.A.No.1. Hence, the proposed amendment cannot be allowed at this stage. It is submitted that if the application is allowed it will cause irreparable injury and damage to the case of the defendants. Hence the defendants have requested to dismiss the application.

4. Heard both the counsels.

5. Upon hearing arguments and on perusal of materials placed on record, the following point would arise for my consideration:-

1. Whether the proposed amendment sought for by the applicant/plaintiff is necessary for the purpose of determining the real question in controversy between the parties ?

2. What order ?

6. My findings to the above points is as follows:-

Point No.1 : In affirmative.

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

REASONS

7. **Point No.1:-**

Plaintiff has filed this suit for permanent injunction against the defendants with respect to the suit schedule property which is described as Land bearing Sy No.34 and the same is repoded as Sy No.34/2 situated at Ballasamudra

village of Pavagada Taluk measuring 4 Acres bounded on the East by : Sarkari Kere, West by : Land belonging to Venkatamma, North by : Land of Chikka Hanumanthappa, South by : Land of Sompalli Venkataravanappa @ Dubbayappa. The plaintiff is seeking to delete the repode Sy No.34/2 in the first line of the schedule and she is also seeking to delete 4 Acres in the third line of the schedule and insert 3 Acres 21 Guntas. It is the contention of the plaintiff that by mistake an error as occurred in the schedule to the plaint and hence she has filed this application.

8. Order 6 rule 17 of C.P.C states “The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. Main contentions of the defendants is that the proposed amendment is an after thought and is filed after advancing arguments on I.A.No.1. It will change the nature of the suit and change the cause of action. But it is pertinent to note that the Applicant/plaintiff is seeking to delete the repode number in the schedule to the plaint and amend the

extent of the suit schedule property with respect to which she is seeking the relief of permanent injunction. Hence, if the amendment is allowed the applicant/plaintiff still has to prove all the contentions advanced by her in the plaint.

10. Order 6 Rule 17 of C.P.C confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. However, if an application for amendment is made after the commencement of trial they can be allowed only if the Court is convinced that party could not have made such an amendment even after exercising due diligence. Thus, such amendments which are necessary for determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter case the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket

formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

11. In this case, the amendment is sought when the suit is set down for hear on I.A.No.1 U/o 39 Rule 1 and 2 of C.P.C. Hence the trial has not commenced. Therefore, since this is pre-trial amendment it has to be allowed. Hence, under these circumstances the said amendment is necessary for determination of real dispute between the parties. Moreover, merely allowing this application does not entitle the Applicant/Plaintiff to reliefs sought by her. The Applicant/Plaintiff still has to prove her case. The proposed amendment would not alter the nature of the suit. It does not take away any admission made in favour of the defendants as discussed earlier. In the absence of the proposed pleading/proposed amendment the suit cannot be adjudicated completely. Injustice would be caused to the plaintiff. Therefore, discretion is exercised for advancing the cause of justice and to avoid litigation by way of writ petition or revision, etc. In order to meet justice defendants are permitted to file additional written statement to meet the amended case of the plaintiff. Hence, it is necessary to allow this application. Therefore, Point No.1 is answered in Affirmative.

12. **Point No.2:-** In view of my findings on Point No.1, I proceed to pass the following:-

ORDER

I.A.No.II filed by the plaintiff Under Order 6, Rule 17 of C.P.C. is hereby allowed.

The plaintiff is permitted to amend the plaint as sought in the application.

Plaintiff is directed to carry out the amendment and furnish the amended plaint.

For amendment and to file amended plaint by

Failing which plaintiff shall not be permitted to amend the plaint as per the above order under Order 6, Rule 18 of C.P.C.

[Fed to the computer to my dictation by the stenographer after verified by me, print taken by him and after signed by me, pronounced in the open Court dated this the 6th day of July - 2022]

Addl. Civil Judge & J.M.F.C.,
Pavagada.