

## **ORDER ON I.A.No.II**

The plaintiff has filed I.A.No.II U/O 6 Rule 17 R/W Sec. 151 of CPC seeking leave of the court to carry out the amendment in the plaint as sought in the application in question.

2. The learned advocate appearing for defendant has filed objection to the above said I.A.No.II.

3. Heard the arguments of the learned counsel appearing for the plaintiff and defendant, perused the pleadings and materials placed on the record.

4. The points that arises for consideration is as follows:

(1) **Whether the proposed amendment is just and necessary to decide the real dispute in controversy between the parties to the suit?**

5. My findings to the above point is in the **Affirmative** for the following:

## **R E A S O N S**

6. In the affidavit filed in support of IA No.11 it is contended that the amendment sought in the application in question is very much necessary for effective adjudication of the matter in dispute. It is contended that while describing the suit property at para No.4, line No.2 and para No.2, line No.3 it is mentioned that the defendant constructing house in the southern portion instead of eastern portion and directions/boundaries wrongly mentioned in the rough hand sketch due to typographical mistakes and the same ought have been amended and the proposed amendment will not change the nature of suit or no fresh cause of action will arise if the amendment is allowed. Hence, he sought for allowing the application in question.

7. The learned counsel for defendant filed objection statement contending that the plaintiff has obtained Temporary injunction against the defendant by showing that the defendant is putting up of the construction of house on the southern side and after obtaining temporary

injunction for this court plaintiff has come up with false applications by falsely claiming that it was wrongly mentioned as southern side instead of eastern side in the pleadings of the plaintiff and that plaintiff is not entitled for the proposed amendment as he has obtained temporary injunction by suppressing material facts and hence, he is not entitled for the relief sought in IA No.II. Therefore, on these and other grounds the defendant sought for allowing the application in question.

8. On perusal of the pleadings and materials available on record, it reveals that the plaintiff has filed the present suit seeking for the relief of permanent injunction against the defendant and this court granted temporary injunction restraining the defendant from putting up construction of house in the suit property till pending disposal of the suit. In support of the arguments of the plaintiff, he has relied on the decision of **Hon'ble High Court of Karnataka** passed in **WP.No.51028/2019 dtd 28-02-2020 and in WP.No.58179/2015 dtd 10-07-2020.**

9. The proposed amendment is pertinent to the boundaries it is true that the plaintiff has

sought to alter the boundaries of the suit property in all four directions in the annexed sketch and to add eastern portion instead of southern portion at line No.2 of para No.4 and line No.3 at para No.4 of the plaint pleadings. The said proposed amendment was opposed by the defendant on the ground that the plaintiffs were trying to fill up lacuna in their case. However it is pertinent state here that trial in the suit is yet to be commenced and under such circumstances plaintiff would at be liberty to correctly describe the suit property by removing any error. In the amendment sought by plaintiff will not introduce fresh cause of action and on perusal of the pleadings and entire materials available on record goes to show that the proposed amendment is just and necessary for the just decision and for the purpose of determine real questions or controversies.

10. Taking into consideration of the facts and circumstances of the case, nature of the suit and the relief sought for in the suit, the proposed amendment will not introduce a new case and change the nature of the suit. Therefore if the plaintiff is permitted to amend

the plaint as prayed for in I.A.No.II, no prejudice or hardship will be caused to the defendant. On the other hand, the defendant is at liberty to file his additional written statement and to lead evidence to prove his claim. In order to decide the matter on merits and to avoid multiplicity of proceedings and for the just decision of the matter in controversy between the parties to the suit, such an amendment appears to be necessary and to meet the ends of justice the application in question to deserves to be allowed.

11. Mere delay in any in filing the amendment application is not fatal to the application. In this regard, it is useful to refer the decision reported in 2006(4) **SSC** 385 between **Rajesh Kumar Agarwal Vs K.K.Modi** is relevant. Hence, the hardship if any on account of delay in filing the present application can be met with by imposing cost. Considering the objection as to delay the cost to be imposed is Rs.500/- under the facts and circumstances of the present case. Therefore, I am of the view that the application filed by plaintiff deserves to be allowed in order to meet the ends of justice. Accordingly, I answer the

**Point under consideration in the Affirmative** and proceed to pass the following:

**ORDER**

I.A.No.II filed by the plaintiff U/O VI Rule 17 of CPC is hereby allowed subject to payment cost of Rs.500/-.

Call on for carrying out amendment and to furnish amended plaint by 13-06-2023.

**Pri.Civil Judge & JMFC-II,  
Karwar.**