

KAUK220001892023



IN THE COURT OF THE SENIOR CIVIL JUDGE AT:
ANKOLA

Dated this the 28th day of February 2024

PRESENT:

Sri. Manohara M.
LL.M.
Senior Civil Judge, Ankola.

ORIGINAL SUIT No.15/2023

Plaintiff: The Kenara District Central Co-Op. Bank Ltd.

-Vs-

Defendants: 1. Shri Vinayak Jatti Naik and another.

I.A.No.IV

APPLICANT: The Kenara District Central Co-Op. Bank Ltd.

V/s

RESPONDENTS: 1. Shri Vinayak Jatti Naik and another.

ORDER ON IA No.IV

The plaintiff filed this application under Order VI Rule 17 R/W Section 151 of CPC to amend the plaint as prayed in the application.

2. In support of this application, the Manger of the plaintiff bank has sworn to an affidavit stating that the sale deed executed by the defendant No.1 in favour of the defendant No. 2 was describing the suit property as Ambarkodla area. So he thought this is to be added in the description of the property. But the hypothecation deed and record of rights describe the suit property as Ankola thaluk Shedgeri gram Sy.No.34/2. Hence, there should not be any confusion in the description of the suit property. So at this stage, he want to delete the said description of the property which is little confusing. The present alteration at this stage is not intentional. It is a bonafide mistake. Hence, this application is filed.

3. The learned counsel for defendants orally opposed stating that this application is filed at belated stage, and the same is filed for delaying the proceeding, and there is no merit in the application. Hence, it is prayed to dismiss the application.

4. Having heard both side and having perused the plaint, IA No.IV, objection and other materials following points arise for consideration.

1. Whether the proposed amendment is necessary to determine the real controversy

between the parties?

2. What order?

5. My answer 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

6. Point No.1: Admittedly, this suit is filed for declaration and consequential injunction in respect of the suit schedule property describing the suit schedule property as land in Sy.No.34/2 measuring 0-05-11 situating at Shedgeri, Ambarkodla Hobli, Ankola Taluk. In the affidavit, it is stated that sale deed executed by the defendant No.1 in favour of the defendant No. 2 was describing the suit property as Ambarkodla area, and hence, the above said description was given in the suit schedule property, but the hypothecation deed and record of rights describe the suit property as Ankola thaluk Shedgeri village Sy. No.34/2. The copy of sale deed and RTC extract are produced they say that the suit schedule property is situating at Shedgeri village of Ankola Taluk, and the sale deed recites that the said suit property is situating inside the area of Ambarkodla. But in the suit schedule, it is stated that the suit property is situating at Ambarkodla Hobli. The

deletion of said Ambarkodla in the suit schedule description, does not put the defendants injustice. The proposed amendment is necessary to determine the real controversy between the parties. Consequently, I answer point No.1 in the affirmative.

7. Point No.2: In view of my reason on Point No.1, I proceed to pass the following:

ORDER

**I.A No.IV filed under Order
VI Rule 17 R/W Section 151
of CPC is hereby allowed.**

(Dictated to the Stenographer, transcribed by him, transcription corrected by me and then pronounced in the open court on 28th February 2024)

(MANORHAR M.)
Senior Civil Judge, Ankola