

ORDER ON I.A.NO.VI

Plaintiff filed the suit for eviction of Defendant from the suit schedule property.

2. Plaintiff submits that Defendant is a tenant in suit schedule property and he is defaulter in payment of rent. The tenancy has been terminated by Plaintiff on 20-8-2016. Defendant filed written statement and submitted that the suit schedule property does not locate in plot No.223 of Sy.No.88 of Venktapur village as avarad in plaint Para No.III(1) of the plaint. The suit schedule property is situated in Government land. The Plaintiff has no right, title over the suit schedule property. The Plaintiff is not the owner of the suit schedule property. There is no any relation between the Plaintiff and Defendant as that of land lord and tenant. The Plaintiff sent notice on 20-8-2016 and this Defendant had replied to the said notice. The suit is suspicious and it deserves to be dismissed. The Plaintiff has misleded this court by averring false averments. Hence, the Defendant prayed to dismiss this suit.

3. This court framed issues. Plaintiff examined his General Power of Attorney holder Sri.Imtiyaz Husen as

PW1 and got marked Ex.P1 to Ex.P20. He is fully cross-examined by the Defendant.

4. Defendant filed this application and prayed to amend 5th line of written statement in Para No.2 as prayed in the application. The Defendant submitted that the suit shop rooms are constructed in vacant Government land bearing Sy.No.88(Old)/231(New) of Venktrapur village, Susagadi Hobli of Bhatkal Taluk. The claim of the Plaintiff is untenable and the Plaintiff has no right over the suit schedule property. The Plaintiff is claiming a property which is situated in Government land. The amendment sought is necessary to mention the survey number that stands in the name of Government. He submits that no hardship will be caused to the Plaintiff if this application is allowed and the amendment does not cause any irreparable loss. Hence prayed to allow this application.

5. The Plaintiff filed objections with respect to said application. The Defendant is intending to introduce new property by amending survey numbers. The Defendant has not produced any documents with respect to other claim in the amendment. The suit is one for eviction and the issues were framed casting burden upon the Plaintiff. The Defendant has not

made out any grounds to allow this application. The alleged grounds or averments in the application and in the affidavit of the Defendant are all denied. The Defendant submits that suit premise is not situated in Sy.No.88 or in 88 hissa 231 of Venktapur village. The Defendant is a lessee and his tenancy is terminated. Hence he prayed to dismiss this application.

6. Heard both sides. Following points arise for my consideration;

Point No.1 : Whether Defendant has made out grounds to allow this application?

Point No.2 : What Order?

7. My findings on the above point is as under;

Point No.1 : **In the Affirmative**

Point No.2 : **As per final Order,
for the following;**

REASONS

8. Point No.1 : Plaintiff filed this suit for the relief of eviction. The Defendant filed written statement denying the contentions of the Plaintiff and prayed to dismiss this suit.

9. It is to be noticed that the issues framed casting burden upon the Plaintiff. There is no any issues casted upon the Defendant to prove the case against

the Plaintiff. The written statement filed by the Defendant nor the documents placed by the Defendant does not establish a title nor possession at this moment. The Defendant categorically denied the allegations of the Plaintiff with respect to the location of the suit schedule property. The Defendant did not pray for any title in his written statement. He just prayed to dismiss the suit.

10. The stage of this suit has crossed the examination of PW1 fully. The Defendant himself cross-examined PW1 in detail on 27-11-2018, 23-1-2019, 18-2-20219, 22-4-2019, 13-11-2019 and 3-1-2020. It is to be noticed that the Defendant cross-examined PW1 with full knowledge of his written statement. It is also understandable that the prayer of the Defendant in order to dismiss the suit is with respect to the location of suit schedule property is different, then that of his occupation.

11. In such circumstances the amendment sought by the Defendant does not change the nature of the claim of the Defendant. Similarly the prayer of the Defendant also will not be changed. It is to be noticed that the Defendant has not claimed any title with respect to the

same but the amendment sought is only in order to rectify the typographical error.

12. Applying facts of this case to Order 6 Rule 17 of C.P.C., it is quiet evident that the nature of the suit nor the admissions made by either party does not change the stand of Defendant. The reasons quoted by the Defendant with respect to the typographical error can be concluded as that of due diligence. The belated application of the Defendant can be allowed by imposing a cost.

13. Therefore, I am of the opinion that the nature and the prayer of the written statement does not change, even otherwise the amendment sought is just a part of denial in the written statement. Henceforth, I answer point No.1 in the Affirmatively.

14. Point No.2 : In view of answering Point No.1 Affirmatively, I proceed to pass following;

ORDER

The application filed U/O.VI Rule XVII at I.A.No.6 by the Defendant is hereby allowed at cost of Rs.200/-.

The cost of Rs.200/- shall be payable to the Plaintiff.

Defendant is hereby directed to amend the written statement and file amended written statement.

Call on, by 13/9/2021.

Sd/-

I/c Addl. Civil Judge and
J.M.F.C. Bhatkal