

**ORDERS ON I.A.NO.VII**

At the stage of further cross-examination of PW.1, instant applicant is filed by the plaintiff under Order VI Rule 17 R/W.Sec.151 of C.P.C. for amendment of plaint with regard to narrating the boundaries of the suit schedule property and giving more details with regard to location and identification of the suit schedule property. In addition, the plaintiff has also sought to add the relief of declaration to declare that, the property No.26 and property No.137 are adjoining to each others.

2. On the other hand, the defendants have filed objections to instant application.

3. Heard on both sides. Perused the entire materials.

4. Having heard and perusal of the records, the following points arise for the consideration of the Court:

**Point No.1:** Whether the plaintiff has made out good grounds to allow the instant application?

**Point No.2:** What order?

5. Answers of the Court to the aforesaid points are as under:

**Point No.1:** In Partly Affirmative,

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

**REASONS**

**6. POINT NO.1:** The present suit is for the relief of bare injunction in respect of suit property i.e. Gram Panchayat Assessment No.26 of Dusagi Village situated within the limits of Madnalli Gram Panchayat of Haliyal Taluk. When the matter was stood for further cross-examination of PW.1, instant application is filed by plaintiff for proposed amendments which are stated above. Through instant application, the plaintiff intends to narrate the boundaries of the suit schedule property and to narrate as to the location of the house properties of the defendants. In addition, the plaintiff intends to seek the relief of declaration.

7. On the other hand, the defendants have contended that, based on the pleadings of plaintiff and defendants, issues are framed and plaintiff has already entered into witness box, deposed on oath, got marked some documents and now the plaintiff intends to withdraw the material admissions given in his cross-examination and as such, instant application is not maintainable. The defendants have taken a contention in their written statement with regard to vague description of the suit property and in spite of the same, the plaintiff has not made any attempt to seek amendment of plaint at the earliest and as such, application is not tenable.

**8.** Admittedly, in the existing plaint, the plaintiff has not described boundaries of the suit schedule property and he has not sought any declaratory relief. Now the plaintiff intends to describe the suit schedule property more properly and definitely and to add additional relief. So far as description of the suit schedule property is concerned, the same is not fatal to the case of defendants, if application is allowed. Initial burden is on the plaintiff to prove his possession over the suit schedule property as on the date of filing of the suit. Proving of boundaries, location, identification etc., is on the plaintiff. Mere amendment of description of the suit schedule property will not cause any hardship to the defendants and it will not change the nature of the suit. Though instant application is filed after settlement of issues but, to decide real questions in controversy, proposed amendment is necessary with regard to description of the suit schedule property.

**9.** So far as the declaratory relief is concerned, through proposed amendment, the plaintiff is seeking the relief of declaration to declare that, the property No.26 and property No.137 are adjoining to each others. Which property is situated adjoining to the suit property has to be proved through oral and documentary evidence. Court cannot declare that, the particular property is situated adjacent to another

property. Declaration of such relief would not create any rights on a particular party or would not put any liability on a particular party. Location of the properties should be proved by the parties to the suit. The plaintiff is not seeking declaratory relief over his property in respect of his title but, he is seeking to declare that, property No.26 and property No.137 are adjoining to each other. Such relief cannot be sought by the parties as it creates any rights or obligations on parties. Moreover, proposed amendment with regard to declaration is not at all required to decide in the present case. Hence, said proposed amendment is liable to be rejected. Accordingly, Point No.1 is answered in **PARTLY AFFIRMATIVE**.

**10. POINT NO.2:** In view of the aforesaid discussion Court proceeds to pass the following:

**ORDER**

I.A.No.VII filed by the plaintiff under Order VI Rule 17 R/W.Sec.151 of C.P.C. is hereby partly allowed.

Plaintiff is permitted to carry out necessary amendment with regard to boundaries of the suit schedule property at paragraph No.1 of the plaint and further permitted to add paragraph No.3(a) in the plaint.

Proposed amendment with regard to declaratory relief sought by the plaintiff is hereby rejected.

No order as to costs.

**Civil Judge, Haliyal.**

**ORDERS ON IA NO.VII AND IX**

IA No.VII is filed by the respondents No.2(b) to 2(d), 3(a),(b), 3(d) (I) and 3(d) (ii) under Section 151 of CPC to permit them to file objections to main petition by setting aside previous order of taking their objections as “not filed”.

2. Similarly, IA No.IX is filed by the respondents No.1(a) to 1(h) under Section 151 of CPC to permit them to file objections to main petition by setting aside previous order of taking their objections as “not filed”.

3. The petitioners have filed separate objections to IA No.VII and IX.

4. Heard on both side. Perused the entire materials.

5. Having heard and perusal of the records, the following points arise for the consideration of the Court:

**Point No.1:** Whether the applicants to IA No.VII and IX have made out good grounds to allow the applications?

**Point No.2:** What order?

6. Answers of the Court to the aforesaid points are as under:

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

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

**REASONS**

7. **POINT NO.1:** The respondents No.2(b) to 2(d), 3(a),(b), 3(d) (I) and 3(d) (ii) and the respondents No.1(a)

to 1(h) have filed the present applications separately to permit them to file objections to the main petition. The sum and substance of contents of affidavit filed by respondent No.2(d) in support of IA No.VII is that, he has appeared in this case on 15-12-2022 and at that time, the matter was posted for issuance of notices to other respondents and on last date of hearing, notices to all respondents served and by considering the same, the Court has passed an order of taking objections to the main petition of respondents No.2(b) to 2(d), 3(a),(b), 3(d)(I) and 3(d) (ii) as “not filed”.

**8.** Similarly, the respondent No.1(e) in his affidavit filed in support of IA No.IX has stated that, he came to know about the pendency of this litigation only when he received notices from the Court after the death of her mother and himself and other applicants of this IA being the grandchildren of late Sri. Kedari Javalkar are having share in the suit schedule properties and as such, it is very much necessary to permit them to file objections to main petition.

**9.** On the other hand, the petitioners in their objections to IA No.VII have contended that, instant applications is filed at belated stage; as many as 12 dates were given to respondents No.2(b) to 2(d), 3(a),(b), 3(d)(I) and 3(d) (ii) to file objections to main petition; multi fold prayers cannot be sought in a single application; respondent No.2(b) (c) are not represented by the counsel who has filed the present application and as such, application is deserves to be rejected.

**10.** So far as IA No.IX is concerned, the petitioners through their counsels have submitted that, it may be allowed on heavy costs. Court has perused entire materials. There is no doubt that, instant applications are filed at belated stage. But at the same time, Court has to see that, sufficient opportunities to be given to the parties to prove their cases. Hence, Court opines that, by condoning delay in filing instant applications, it can permit the applicants to file objections to main petition. Otherwise, it would amount to denial of opportunity. At the same time, Court has to consider the hardship and inconvenience which would be caused to the 'no fault party'. With this, Court opines that, applications could be allowed by imposing necessary costs. Hence, Point No.1 is answered in the **AFFIRMATIVE**.

**11. POINT NO.2:** In view of aforesaid reasons and findings, Court proceeds to pass the following:

**ORDER**

IA No.VII filed by the respondents No.2(b) to 2(d), 3(a),(b), 3(d) (I) and 3(d)(ii) under Section 151 of CPC is hereby allowed on cost of Rs.1,000/- payable to the petitioners. Consequently, respondents No.2(b) to 2(d), 3(a),(b), 3(d)(I) and 3(d)(ii) are permitted to file objections to main petition subject to payment of cost.

IA No.IX filed by the respondents No.1(a) to 1(h) under Section 151 of CPC is hereby allowed on cost of Rs.1,000/-

payable to the petitioners. Consequently, respondents No.1(a) to 1(h) are permitted to file objections to main petition subject to payment of cost.

**Civil Judge, Haliyal.**

**ORDERS ON IA NO.VIII**

IA No.VIII is filed by the petitioners against the respondents under Order VI Rule 17 of CPC for amendment of petition i.e., to delete “Rule 12” and to add “Rule 18” in its place in the heading after the cause title of the petition.

**2.** The respondents No.2(b) to 2(d), 3(b), 3(d) (I) and 3(d) (ii) and the respondents No.1(a) to 1(h) have filed separate objections to IA No.VIII.

**3.** Heard on both side. Perused the entire materials.

**4.** Having heard and perusal of the records, the following points arise for the consideration of the Court:

**Point No.1:** Whether the applicants have made out good grounds to allow the application?

**Point No.2:** What order?

**5.** Answers of the Court to the aforesaid 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:** The petitioners have filed the present application for amendment of heading after the cause title of the petition to the effect that, present petition is filed under Order XX Rule 18 and not under Order XX Rule 12 of CPC. It is stated in the affidavit filed in support of instant application that, instead of typing “Rule 18” it has been typed as “Rule12” in the heading after the cause title of the petition and the said mistake is a typographical error which could be rectified and no harm would be caused to the respondents by making necessary correction.

7. On the other hand, the respondents No.1(a) to 1(h) have contended in their objections that, present petition is filed in the year 2014 and instant application is filed for amendment in the year 2023 which is not permissible under law. It is also contended that, the Court Commissioner has submitted his report, petitioners have already led their evidence and at the stage final arguments, instant application is filed which is not tenable. It is further contended that, the petitioners have prosecuted the case till today under Order XX Rule 12 of CPC for the relief of possession and mesne profits and now they intend to change the provision of law under the guise of typographical error which cannot be permitted.

8. The respondents No.2(b) to 2(d), 3(b), 3(d) (I) and 3(d) (ii) have contended in their objections that, present petition is filed in the year 2014 and instant application is filed for amendment in the year 2023 which is not permissible under law. It is also contended that, the Court

Commissioner has submitted his report, petitioners have already led their evidence and as per proviso of Civil Procedure Code (Amendment Act), 2002, the instant application is not tenable. It is also contended that, the respondents No.2(b) to 2(d), 3(b), 3(d) (I) and 3(d) (ii) have already taken a contention in their objections to main petition that, the present petition under Order XX Rule 12 is not tenable as the original suit was filed for the relief of partition and separate possession and Order XX Rule 12 deals with recovery of possession and mesne profit. It is further contended that, principle of “quoting wrong provision of law is not fatal to the case” is not applicable to main petition and the petitioners have not assigned any cogent reasons as to how typographical error was occurred and if proposed amendment is allowed, nature of proceedings will be changed. With this, the respondents prayed to reject the application.

**9.** There is no dispute that, Order XX Rule 12 of CPC deals with decree for possession and mesne profits. OS No.97/1982 was filed for the relief of partition and separate possession. To draw final decree based on preliminary decree, the petitioners ought to have filed the present petition under Order XX Rule 18 of CPC. However, the heading after the cause title of the petition shows that, the present petition is filed under Order XX Rule 12 of CPC instead of Order XX Rule 18 of CPC.

**10.** It is settled law that, pleadings to be considered in its totality. In the body of the petition, the petitioners have not sought the relief of possession and mesne profits. They

have sought to draw final decree by effecting the partition of the petition schedule properties by metes and bounds. Merely because the petitioners have mentioned “Rule 12” in the heading after the cause title of the petition does not mean that, they have filed the present petition for recovery of possession and mesne profits and they have all along conducted the case for the said relief. Hence, the wrong provision of law which could be seen in the heading after cause title of the petition is nothing but a typographical error which could be rectified.

**11.** Though it is true that, the instant application is filed at the fag end of the petition but it is also settled law that, application seeking the amendment to be considered liberally to meet the ends of justice. It is the duty of the Court to see as to what harm or prejudice will be caused to the other side if proposed amendment is permitted. In the case on hand, though this petition is pending since 2014, very recently, the respondents have filed objections to main petition. From the beginning itself, the respondents have not contested the matter by stating that, the petition is not tenable under Order XX Rule 12 of CPC. Moreover, at this stage, if the proposed amendment is allowed, no prejudice will be caused to the other side. Hence, the instant application is deserves to be allowed. Having regard to the same, Point No.1 is answered in the **AFFIRMATIVE**.

**12. POINT NO.2:** In view of aforesaid reasons and findings, Court proceeds to pass the following:

**ORDER**

IA No.VIII filed by the petitioners under Order VI Rule 17 of CPC is hereby allowed on cost of Rs.1,000/- payable to the respondents.

Consequently, the petitioners are permitted to carry out necessary amendment to the petition and they shall furnish amended petition on next date of hearing.

**Civil Judge, Haliyal.**