

ORDERS ON I.A.NO.XIII

This is an application filed by the plaintiff under Order VI Rule 17 R/w Section 151 of CPC, seeking amendment to plaint para No.9, 14, 15, 17 to 20, 22, 24 and para V containing relief column. By way of amendment the plaintiff intends to insert plaint 'B' schedule property after the word plaint 'A' schedule property.

2. In the affidavit annexed to the IA, the plaintiff has averred that both plaint 'A' and 'B' schedule properties belong to their joint undivided family. However, in the plaint by oversight he had mentioned only plaint 'A' schedule properties and omitted to mention both the schedule properties. The said mistake came to his knowledge recently and hence, this application is moved seeking amendment. The amendment sought for will not change the nature of the suit. Hence, it is prayed to allow the IA.

3. Per contra, the defendant No.1 has filed the counter statement denying the IA averments. It is contended that the application is a clear after thought on the part of plaintiff and it is most malafide one. It is submitted that the present application is filed after the Hon'ble High Court passed an interim order in MFA No.6172/2021 dated 23.12.2021 granting interim stay of the impugned order of this Court so far as plaint 'B' schedule properties is concerned till further orders. The Hon'ble High Court has clearly observed in the said order that the applicant/plaintiff has admitted that he has executed registered release deed dated 30.06.2007 in

respect of plaint 'B' schedule properties and in that connection no declaration or relief is sought for setting aside the said release deed. Therefore, the maintainability of the suit in respect of the plaint 'B' schedule property becomes doubtful and in the light of the above the plaintiff is legally barred from seeking proposed amendment to insert plaint 'B' schedule properties in the plaint as well as para V relief column. The amendment sought for are clearly beyond the scope of Order VI Rule 17 of CPC. Hence, it is prayed to dismiss the IA with compensatory cost.

4. Heard both sides and perused entire case records.

5. The following point would arise for my consideration;

“Whether the amendment sought for is necessary for the determination of real question in controversy between the parties and it will not cause injustice to the other side?”

6. My findings to the above point is in the affirmative for the following:

REASONS

7. **Point No.1:** This is a suit for partition filed by the plaintiff against his brothers defendants No.1 and 2. The detailed plaint would suggest that the plaintiff is intending to seek partition in respect of both plaint 'A' as well as 'B' schedule property. The valuation slip attached to the plaint would disclose his intention to seek relief in respect

of both the properties and accordingly Court fees are paid in respect of both the properties. At para 3 of plaint the averments regarding plaint 'A' schedule properties being held jointly by the family is found. Further at para 8 of the plaint there is an averment regarding release deed dated 30.06.2007 executed by the plaintiff and defendant No.2 in favour of defendant No.1. However, the plaintiff intends to ignore the said release deed. The said averments in the plaint would clearly set out the intention of the plaintiff to seek the relief of partition in respect of both the plaint 'A' and 'B' schedule properties. No doubt the plaintiff has not sought declaratory relief in respect of the release deed executed by himself along with defendant No.2 in favour of defendant No.1, but learned counsel for plaintiff would argue that the present suit for partition is a comprehensive one. If the suit properties are held to be partible in nature the execution of the release deed or the sale deeds would be immaterial. At this juncture it is not proper to appreciate the argument of learned counsel for plaintiff to give any finding with regard to the maintainability of the suit, especially when the appeal is pending before Hon'ble Hon'ble High Court of Karnataka.

8. Admittedly, MFA No.6172/2021 is pending on the file of Hon'ble High Court of Karnataka and as such present application has to be cautiously considered by this Court. Learned counsel for defendant vehemently argued that Hon'ble High Court of Karnataka has clearly observed that no relief is sought to set aside the release deed executed in respect of plaint 'B' schedule properties and as such the suit itself is not maintainable. I have carefully gone through the order dated 23.12.2021

passed by Hon'ble High Court of Karnataka and there is no stay of the proceedings and as such this Court is very much competent to decide the present application seeking amendment. Usually the amendment to the plaint would date back to the presentation of the plaint on the principles of doctrine of relation back. However, considering the pendency of MFA No.6172/2021 on the file of Hon'ble High Court of Karnataka it is necessary to give effect to the amendment from the date of order only.

9. Considering the intention of the plaintiff to seek relief in respect of both plaint 'A' and 'B' schedule properties, the clerical mistake if any in omitting to include plaint 'B' schedule properties at various plaint paras including the relief column needs to be excused. Amendment sought for would not change the nature of the suit and it is very much required to determine the real question in controversy between the parties. The inconvenience if any caused to the defendants may be compensated by imposition of cost. The trial in this suit is yet to commence and as such there is no impediment to consider the application seeking amendment at this point of time. It is necessary to have a liberal approach in considering the amendment application unless it causes serious prejudice or injustice to the other side. In the present case if plaint 'B' schedule property was not at all available in the plaint it would have been a different situation. Herein the plaintiff has in-fact contended the plaint 'B' schedule property also to be a joint family property and therefore, no serious injustice or irreparable loss will be suffered by the other side. Even if the plaint is amended and the plaintiff is permitted to lead his evidence, the defendant No.1 would get an opportunity to cross-examine the plaintiff during trial.

As such no injustice or irreparable loss will be suffered by him. Accordingly, for the above observations above point is answered in affirmative and this Court deems fit to pass the following:-

ORDER

I.A. No.XIII filed under Order VI Rule 17 R/w Section 151 of CPC, is hereby allowed on cost of ₹. 2000/-.

The amendment sought in the application is hereby permitted to be incorporated in the plaint and it shall come into effect from the date of this order.

The learned counsel for plaintiff shall carry out necessary amendment and submit amended plaint copy.

Call on : 20.07.2023

(Vignesh Kumar)
Prl. Sr. Civil Judge and CJM.,
Udupi.