

ORDERS ON I.A. No.I

The applicant/plaintiff filed IA No.I under order 6 Rule 17 of CPC for seeking permission to amend the plaint to delete para in para No.4 and add new para No.4

2. The IA No.I filed by Plaintiff accompanying in affidavit he has stated that, due to typical mistake in plaint para No. 4 suit properties are described as ancestral property. but the suit item No.2 joint family property. purchase in the name of defendant No.2 through joint family funds, when common ancestral was alive. Further it is stated that this application does not change the nature of suit. Further the aforesaid aspects are very much necessary for adjudication of the dispute in controversy between the parties, it is just and necessary to allow the said application in the interest of justice and equity.

3. The counsel for defendant filed objection by denying the averments of the said application and submits that, the petition filed by is not maintainable. Further this application

will change the nature of suit. Plaintiffs have filed this application to harass defendant. Hence, the said application has to be dismissed with exemplary cost.

4. Heard on IA No.I from both side.

5. The points that arise for consideration are;

1. *Whether the amendment sought by the plaintiff is necessary to adjudicate the matter in controversy between the parties ?*
2. *What order?*

6. Perused pleadings and materials available on record, the aforementioned points answered 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 learned counsel for plaintiffs submits that, Plaintiff accompanying in affidavit he has stated that, due to typical mistake in plaint para No. 4 suit properties are described as ancestral property. but the suit item No.2 joint

family property. purchase in the name of defendant No.2 through joint family funds, when common ancestral was alive. Further it is stated that this application does not change the nature of suit. Further the aforesaid aspects are very much necessary for adjudication of the dispute in controversy between the parties, it is just and necessary to allow the said application in the interest of justice and equity, if the application is allowed no prejudice will be caused other side and it is necessary to avoid the multiplicity proceedings.

8. The learned counsel for the defendant filed objection by denying the averments of the said application and submits that, the petition filed by is not maintainable. Further this application will change the nature of suit. Plaintiffs have filed this application to harass defendant. Hence, the said application has to be dismissed with exemplary cost.

9. On perusal of contents of affidavit of IA No.I, it reveals that, due to the mistake plaintiff has stated that suit properties are ancestral properties. On perusal of plaint it

shows that plaintiff and defendant No. 1 to 3 are joint family members. The amendment sought by the plaintiff only to item No. 2 is purchased in the name of defendant NO.2 out of joint family fund. In view of that it is necessary to ascertained whether Item No.2 properties joint family property or not it is matter of trial. Plaintiff has the right to seek the proposed amendment to avoid the multiplicity proceedings of the case and to decide the right of the suit schedule property between the parties. It is also just and necessary to allow the application for adjudication of the matter in dispute finally. If the proposed amendment is permitted no injustice will be caused other side.

10. The Hon'ble High Court of Karnataka has held in the decision reported in **ILR 2012 KAR 3961, Smt. Gowradevi S. Orekondy and others vs. K.B.Rudrappa and others**, that –

Code of Civil Procedure 1908 - orders 6 rule

17 *the amendment ought to be allowed which satisfied two conditions such as (a) if amendment is not working injustice to the other side, and (b) of being necessary to the purpose of determining the real questions in controversy between the parties.*

11. From the provision of Order VI Rule 17 of C.P.C., and above decision of the Hon'ble High Court of Karanataka , it reveals that, the parties can permit to amendment of the pleading if the proposed amendment is not caused injustice to the other side, and it is necessary to determining the real questions in controversy between the parties.

12.By considering the contents of affidavit of the application, pleadings and objection raised by the defendants it discloses that, the proposed amendment is necessary to decide the matter finally and to avoid the multiplicity proceedings of the case. Moreover, it is not caused any injustice to the other side. By considering the said grounds this court has come to conclusion that, the present application filed by the plaintiff is deserved to be allowed. Hence, point no.1 is answered in the **affirmative**.

13 Point No.2 : For the reasons discussed above, proceed to pass the following;

ORDER

IA No.I filed by the plaintiff U/o
6 Rule 17 of CPC, is hereby allowed.

Further of plaintiff permits to
amend the plaint as sought in the
said application.

To carry out amendment of the
plaint and for furnishing the
amended plaint.

Call on: 28.06.2024

**Addl.Civil Judge & JMFC
Yadigir.**