

OS.No.233/2022

25/04/2024

Plaintiff: Shri. R.S.P Adv.

Defendant : Shri. S.B.P. Adv.

ORDERS ON IA NO.3 FILED BY THE PLAINTIFF U/O 6 RULE
17 R/W SECTION 151 OF CPC

1. Plaintiff has filed the present suit for the relief of perpetual injunction as against the defendant.

2. When the case was at the stage of further cross examination of Pw.1, the plaintiff has filed the instant application praying this court to allow him to carry out the amendment in the plaint so as to mention the correct boundary of the suit property at its western side and also to add certain pleadings after para No.3 of the plaint.

3. In the affidavit annexed to the application it is averred that the plaintiff has filed the present suit seeking the relief of perpetual injunction. It is averred that due to the typographical error, instead of mentioning the land of Mr.Lachamappa at western side, it was wrongly typed as road. Therefore, by way of amendment the plaintiff is intending to rectify the said error. It is the averred that the pleadings which the plaintiff is proposing to add after para No.3 of the plaint regarding existence of two bits of land is very much essential for fare adjudication of the above suit. It is averred that the proposed amendments is very much necessary to resolve the real dispute involved between the parties. The proposed amendment will not take away the defence of the defendant. If the

application is allowed no hardship will be caused to the defendant and the proposed amendment will also not change the nature of the suit. If the proposed amendment is not allowed, then it will lead to the multiplicity of proceedings. Hence with these grounds the plaintiff has prayed to allow the application.

4. The application was objected by the defendant by filing his objection by contending that the application filed by the plaintiff is not maintainable under the law. The reasons assigned in the accompanying affidavit is not just and proper. It is contended that way back on 18.11.2023 itself the defendant has shown the correct boundary of the suit property in his written statement. In spite of it the plaintiff has filed the present application after the commencement of the trial. It is contended that since the trial in this suit is already commenced the plaintiff is not entitled to seek the amendment of the plaint. The defendant has denied the existence of Hyderabad-pusspul road in the suit property and so also the defendant has denied the bifurcation of suit property into two bits. The plaintiff has filed the present application at this belated stage with an intention to further drag on the matter. The proposed amendment sought by the plaintiff in the instant application is not proper. The defendant has stated that if the proposed amendment is allowed then the nature of the suit will be changed. With these objections the defendant has sought for dismissal of the application.

5. Heard both the sides on IA No.3. Perused the records. The following points arise for my consideration:

POINT No.1: Whether the Plaintiff has made out a valid grounds to allow the application?

POINT No.2: What order?

6. My answers to the above points are as hereunder:

Point No. 1: In the affirmative

Point No. 2: As per my findings on point No.1 for the following:

REASONS

7. POINT No.1: Plaintiff has filed the present suit for the relief of perpetual injunction as against the defendant. In his written statement the defendant has categorically denied the boundaries of the suit property as mentioned at para No.2 of the suit property and thereby the defendant has contended that the boundaries of the suit property given by him at para No.10 of his written statement are true and correct boundaries. According to the defendant, at the western side of the suit property the land of one Mr.Lachamanna is in existence. Whereas, initially at para No.2 of the plaint, the plaintiff had stated that at the western side of the suit property there exist a road. It is the case of the plaintiff that due to typographical error the said mistake has occurred in the plaint. Now, by way of amendment, the plaintiff is intending to rectify the said mistake occurred in mentioning the western side boundary of the suit property. It is significant to note here that though the defendant has objected the application, but the defendant has not disputed that at the western side of the suit property the land of one Mr.Lachamanna is in existence. At para No.10 of his written statement itself the defendant has stated that

at the western side of the suit property the land of one Mr.Lachamanna is in existence. Hence, existence of land of one Mr.Lachamanna at the western side of the suit property is not in dispute. Hence, such being the case there is no impediment in permitting the plaintiff to rectify the western side boundary of the suit property by way of amendment. Moreover, the present suit being one for perpetual injunction, the identity of the property plays important role. If the plaintiff is not permitted to mention the correct boundary of the suit property, then the decree passed by this court will remain as a paper decree.

8. Further, the plaintiff has also sought permission of this court to add certain pleadings after para No.3 of the plaint. According to the plaintiff, the facts which he is intending to add in the plaint by way of amendment are material facts which are relevant for fare adjudication of the above case. But the defendant has denied those facts. The facts which the plaintiff is intending to add in the plaint by way of amendment are subject to proof in the trial. Therefore, such being the case there is no impediment in permitting the plaintiff to add those pleadings in the plaint by way of amendment. This court being the trial court, full opportunity has to be given to the plaintiff to properly present his cause. The proposed amendment will not change the nature of the suit. Furthermore, the defendant will also get the opportunity to cross examine the plaintiff on the proposed amendment. Hence, no prejudice will be caused to the defendant if the application is allowed. Hence, in view of the above there is no impediment to allow the instant application. No doubt, some delay is occurred in

filing the instant application, the delay caused by the plaintiff can be adequately compensated by imposing costs. Therefore, in order to avoid multiplicity of proceedings and also in order meet the ends of justice, the present application deserves to be allowed.

Accordingly point No.1 is answered in the Affirmative.

9. POINT NO.2: In view of my foregoing findings and discussions on Point No.1, I proceed to pass the following:

ORDER

IA No.3 filed by the Plaintiff U/o 6 rule 17 R/w Section 151 of CPC is hereby allowed on costs of Rs.300/-.

Plaintiff is permitted to carry out the necessary amendment in the plaint as sought for in the I.A.No.3.

To carry out the amendment and to furnish the amended plaint.

Call on: 07.06.2024.

C.J & JMFC, YADGIR