

ORDER BELOW EXHIBIT No. 28

1. The plaintiff has filed this application as per Order 6, Rule 17 of the Civil Procedure Code for amendment of pleading.

2. It is contended that, the plaintiff has filed this suit for declaration and injunction against the defendants. The plaintiff and defendants have $\frac{1}{2}$ share in the suit property, but by oversight in plaint para no. 1, plaintiff has failed to plead that $\frac{1}{2}$ share in the properties described in plaint para 1(a), (b) and (c). It is also contended that, in plaint para no. 2, in second line by oversight plaintiff failed to plead word “predecessor” and in plaint para. no. 2, page no. 4 in 4th line plaintiff has mentioned “gift deed” by oversight instead of mentioning “relinquishment deed”. This amendment is of formal nature and it is not going to change nature of the suit.

3. Learned counsel appearing for the defendants filed say and opposed this application.

4. Learned counsel appearing for the plaintiff submitted that, plaintiff has pleaded in para. no. 2 of the plaint that the plaintiff and defendants have $\frac{1}{2}$ share in the suit properties, but by oversight plaintiff has failed to plead in plaint para no. 1 that, $\frac{1}{2}$ share in the suit properties described in para. no. 1(a), (b), (c).

It is further submitted that, by oversight the

plaintiff failed to mention “predecessor” and also instead of “deed of relinquishment” it has been mentioned as “gift deed”. These are formal amendments and it is neither going to change nature of the suit, nor going to cause any prejudice to the defendants.

5. As against this, learned counsel appearing for the defendants submitted that, plaintiff has pleaded suit properties as field Gat Nos. 114/5B, 114/6B and 114/6C and mentioned total areas of these properties. In the prayer clause, plaintiff has claimed relief of declaration and injunction in respect of properties pleaded in the plaint para no. 1.

Now by proposed amendment plaintiff is trying to plead that, $\frac{1}{2}$ share out of these properties and this would change nature of suit and cause prejudice to the defendants. It is further submitted that, plaintiff has pleaded about the “gift deed” and now plaintiff wants to plead as a “relinquishment deed” and it also change nature of suit.

6. This Court carefully gone through the pleading of both the parties, submissions of both the learned counsels and the material on record. By filing this application plaintiff has claimed relief of amendment of pleading in plaint para no. 1, para no. 2 and on page no. 4 of the plaint. In the para. no. 1, plaintiff is trying to amend plaint and intend to mention that, $\frac{1}{2}$ share out of these properties. On perusal of para. no. 2 it appears that, in the plaint para. no. 2 plaintiff has made clear

that, there is $\frac{1}{2}$ share of father of the plaintiff and the defendants in all the suit properties. Under such circumstances, if this amendment is allowed, it is not going to cause any prejudice to the defendants.

7. So far as pleading mentioning word “predecessor” in para. no. 2 of the line no. 2 of the pleading is concerned, it is not disputed by the plaintiff and defendants that, these suit properties are came in their hands from their predecessors. Under such circumstances, if the proposed amendment is allowed and the plaintiff is permitted to plead word “predecessor”, then it is not going to cause any prejudice to the defendants.

8. Further so far as mentioning “deed of relinquishment” instead of “gift deed” pleaded in page no. 4 of the plaint is concerned, the fact in issue between the parties in this suit as well as in suit bearing R.C.S. No. 107/2011 is a deed dated 29/05/1989.

Under such circumstances, though it is by oversight mentioned as “gift deed”, but the defence of the defendants is about the alleged deed dated 29/05/1989. Under such circumstances, this amendment is of formal nature and it is neither going to change nature of the suit, nor causing any prejudice to the defendants. Further trial of the suit is yet to commence. Under such circumstances, this Court pass following order.

ORDER

1. Application is hereby allowed subject to cost of Rs. 200/-.
2. Plaintiff to carry out amendment within 7 days and supply copies of amended plaint.

(D. B. Mane)

**Jt. Civil Judge, Junior Division,
Malshiras.**

Date : 14/08/2012