

ORDER BELOW EXH. 40

(Date : 18-07-2013)

1. This is an application by plaintiff for amending his plaint. It is only contention in said application that due to after construction by defendant No. 6 to 10 in suit property amendment in plaint is necessary. Further, it is contended that defendant No. 6 to 10 not taken any sanctioned of concerned authority to divide the suit property. Suit property S.No. 181 has been divided in various part by defendant No. 6 to 10, therefore, plaintiff wants to remove construction made by defendant No. 6 to 10 in suit property S.No. 181. There is one more prayer by which plaintiff going to insert by way of amendment. The said prayer is with regard to the injunction against defendant No. 6 to 10.

2. On the contrary defendants strongly opposed this application on the ground that the proposed amendment will change nature of suit and it will cause prejudice to them. All the proposed amendments were pleaded by plaintiff in a previous suit No. 2/2003. The previous suit was filed by plaintiff against defendant No. 10 which was decided on merit. Therefore, now plaintiff cannot amend his pleadings with regard to the proposed amendments and lastly, prayed that application be rejected.

3. Considering the above rival contentions following points are framed and their reasons are given with findings as under ;

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether plaintiff is entitle to amend his pleadings ?	Affirmative.
2. What order ?	Application is allowed.

REASONS

AS TO POINT NO. 1 AND 2 :-

4. Perused the application and say filed by the defendants.

The purpose and object of Order 6 Rule 17 is to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just, the power to allow amendment is wide and can be exercised at any stage of proceeding in the interest of justice. The Courts are more liberal in allowing the amendment of written statement as question of prejudice is less likely in that event. Present suit is filed by plaintiff for partition and separate possession of the suit properties. As per pleading of the plaintiff there are two suit properties namely, S.No. 181 and S.No. 203. In a proposed amendment plaintiff want to plead with regard to the illegal constructions of defendant No. 6 to 10. Considering the present suit it is for partition if amendment is not allowed plaintiff will suffer irreparable loss as defendant in their written statement alternatively pleaded the exchange of shares in between themselves and plaintiff, therefore, proposed amendment is necessary to decide suit finally.

5. Suit is fixed for hearing. From the record it shows that on 29-08-2011 issues were framed after that matter was posted for hearing and on 04-11-2011 present application has been filed by plaintiff. Therefore, considering the stage of the suit application is liable to be allowed. So far as cause of action is concerned it is also within limitation. Hence, point No. 1 is answered in affirmative and in answer to point No. 2 following order is passed.

ORDER

1. Application at Exh. 40 hereby allowed.
2. Plaintiff is directed to carry out necessary amendments in his pleadings within 14 days.
3. He is also directed to supply copies of amendments to defendants.
4. No order as to costs.

Date : 18-07-2013

(K. B. Kamgauda)
Jt. Civil Judge (Jr.Dn.)
Umarkhed