

ORDER ON IA.NO.VI

I.A.No.6 is filed by the plaintiffs Under Order 6 Rule 17 of CPC to amend the plaint by way of insertion of the property.

2. It is stated in the accompanying affidavit that, suit is for Declaration of Title and Permanent Injunction. The plaintiffs have no any conflict of interest with respect to subject matter of the suit. Proposed Item No.8 property was allotted to the share of husband of plaintiff No.1 namely Narasimhamurthy in O.S.No.263/2001. The plaintiffs are the class one legal heirs of said Narasimhamurthy. Hence, they are having right over the said property. It was mud roofed house earlier. It was fallen and collapsed. It was left out to include in the schedule. Hence, it is necessary to insert the said property. It doesn't change nature of suit. It is formal amendment and also it is essential for proper adjudication of the dispute involved in this case. Hence, it is prayed to allow the application.

3. The defendant No.4 has filed objection stating that application is not maintainable. To drag the proceedings, and to harass the defendants, it is filed. Plaintiffs have

suppressed material facts. It changes the nature of suit. No grounds are assigned. Hardship will be caused to the defendant No.4. Hence, it is prayed to dismiss the application.

4. Heard the arguments and perused the materials on the record.

5. The plaintiffs have filed the suit for Declaration of Title with respect to schedule properties. They have also sought for the relief of Permanent Injunction. They have also claimed that they are the legal heirs of deceased Narasimhamurthy. They have come up with the present application seeking insertion of Item No.8 property. It is Gramatana Vacant Site. The condition of the said property is also stated. It is also stated that they are having right over the said property as it was allotted to the husband of plaintiff No.1 in O.S.No.263/2001. The Final Decree in the said suit is produced. It shows that Narasimhamurthy was allotted the proposed Item No.8 property in the said suit. The plaintiffs are claiming right in respect of that property under said Narasimhamurthy. They have to prove that they are having title over the said property after death of Narasimhamurthy. They have also to prove that they are class one legal heirs as pleaded. If the property is inserted,

it doesn't mean that the plaintiffs are having title over the property. They are bound to prove the right over the property. Hence, objection is not sustainable. If the amendment is allowed, it doesn't change the nature of suit. Opportunity has to be given to the plaintiffs to insert the property and to prove the same. Therefore, I am of the opinion that there are grounds in the application. Accordingly, I.A.No.6 is allowed.

For amendment and amended plaint.

Sd/-

**IIIrd Addl Sr.Civil Judge & Jmfc.,
Devanahalli.**

**C/c. IInd Addl Sr.Civil Judge & Jmfc.,
Devanahalli.**