

**BEFORE THE 5TH ADDL-DISTRICT & SESSIONS COURT
AT HASSAN**

PRESENT:- Santhosh Gajanan Bhat

B.A.L, LL.B

**5th Additional District and
Sessions Judge. Hassan**

Dated 22nd day of November 2018

O.S.No. 1/2018

Plaintiff :

1.	Zakeer pasha S/o Mohamad moosa, aged about 42 years, Kushalanagara Extension, Sakaleshapura Town. Hassan District.
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(BY Sri. C.N.Y, Advocate)

V/s

Defendant:-

1.	Veena Sequeira A.J, aged about 67 years, S/o A.J. Sequeira, Aaluvalli estate, Kakana Mane village, Baage post, Belagodu hobli, Sakaleshapura Taluk.
2.	Post Master, Sakaleshapura post office, B.M.Road, Sakaleshapura town, Hassan District.

3	The Manager, Cauvery Kalpatharu Grameena bank, B.M.Road, Sakaleshapura, Hassan District.
4	The Manager, Cauvery Kalpatharu Grameena Bank, Baage branch, B.M.Road, Baage, Sakaleshapura Taluk Hassan District.
5	The Manager, Indian Overseas Bank B.M.Road, Sakaleshapura branch, Sakaleshapura Town. Hassan District.
6	The Manager, State Bank of India B.M.Road, Sakaleshapura Branch, Sakaleshapura Taluk, Hassan District.

(D1 by H.J.R,
D3 & 4 by Sri. K.M.S,
D5 by Sri. B.J.S, D6 by sri.M.C.M.
Advocates)

I.A.NO. /2018

Applicant : Zakeer Pasha

Vs

Opponents : Veena Sequeira and others

Order on I.A. filed by the Plaintiff Under Order 6 rule 17 R/w sec.151 of C.P.C.

This application is filed by Plaintiff under Order 6 Rule 17 R/w Sec 151 of CPC seeking to amend the prayer column of the plaint.

2. The Plaintiff had filed the above suit seeking for probate of will. Originally the Plaintiff before the court was the Petitioner who had filed the petition for probating the will executed by one Richmond Sequeira on 19.11.2014. On filing of the said petition notice was ordered to the Respondent there and the same was resisted by the Respondents by filing objections. Hence, there a triable issue and accordingly the petition was converted into original suit and the Plaintiff had filed the plaint in this regard. Further the Plaintiff has contended that at the time of filing the plaint he has not sought the relief of probating the will dated: 19.11.2014. However, he had sought to declare that he was entitled for the half the amount mentioned in the bank account of the testator of the will as per the said will. He has also contended that the said mistake was due to oversight and was not intentional and hence he has sought for allowing the application.

3. The Defendants have not filed any statement of objection to the application and accordingly their objection is taken as not filed.

4. Perused the records and the following points do arise for my consideration.

1. Whether the Plaintiff has made out the ground to allow the application seeking for amendment of plaint?

2. What order?

5. For the reasons to be stated hereinafter, I answer the above points as under:

Point No.1 : In the Affirmative

Point no.2 : As per final order

REASONS

6. Point No. 1 :

The Plaintiff had filed the above suit seeking for probate of will. Originally the Plaintiff before the court was the Petitioner who had filed the petition for probating the will executed by one Richmond Sequeira on 19.11.2014. On filing of the said petition notice was ordered to the Respondent there and the same was resisted by the Respondents by filing objections. Hence, there a triable issue and accordingly the petition was converted into original suit and the Plaintiff had filed the

plaint in this regard. Further the Plaintiff has contended that at the time of filing the plaint he has not sought the relief of probating the will dated: 19.11.2014. However, he had sought to declare that he was entitled for the half the amount mentioned in the bank account of the testator of the will as per the said will. He has also contended that the said mistake was due to oversight and was not intentional and hence he has sought for allowing the application.

7. I have carefully appreciated the contention urged by the Plaintiff. Initially the Plaintiff had filed the petition Under Section.276 of Indian Succession Act seeking for probate of will. In the said proceedings the petition was resisted by the Respondent no.1 who has been arrayed as Defendant no.1. In the above suit the Defendant no.1 had not appeared nor she had filed any written statement opposing the suit. However, the amendment sought for is only typographical in nature and the same is allowed, it would not change the nature of suit nor the cause of action. Hence, in my humble opinion the application deserves to be allowed. Accordingly, I answer point no.1 in the **Affirmative.**

8.**Point No.2 :** For the reasons stated above, I proceed to pass the following:

Order

I.A. filed by the Plaintiff / Applicant under Order 6 Rule 17 r/w Sec.151 of C.P.C. is hereby allowed and Plaintiff is permitted to carry out amendment as sought in his application.

(Dictated to the Stenographer, directly on computer typed by her, corrected and then pronounced by me in the open Court, on this the 22nd day of November 2018)

(Santhosh Gajanan Bhat)
5th Additional District & Sessions
Judge, Hassan.

(Order pronounced in the
open court vide separate order)

ORDER

I.A. filed by the Plaintiff /
Applicant under Order 6 Rule 17
r/w Sec.151 of C.P.C. is hereby
allowed and Plaintiff is
permitted to carry out
amendment as sought in his
application.

5th ADJ., Hassan.