

**IN THE COURT OF THE V ADDL. CITY CIVIL
JUDGE, AT BANGALORE CITY.
(CCH-13)**

DATED THIS THE 23rd DAY OF JUNE, 2017

PRESENT

**SMT.NAGAVENI, B.A., LL.B.
V ADDL.CITY CIVIL & SESSIONS JUDGE
BANGALORE**

O.S.NO.7686/2013

**PLAINTIFF: 1. Sri.Narayanappa
 2. Sri.Lokesh**

**Both are sons of
Late Venkatappa
r/at vadarappalya
Kothanur Dakhale,
Uttarahalli Hobli,
Bangalore South Taluk.**

/vs/

**DEFENDANTS: 1. Manjunath
 S/o C.R.Gundanna
 Aged about 31 years, r/at
 No.38, 2nd cross,
 2nd main, Arakere,
 Bangalore-76.**

**2. Sathyajith K.B
S/o B.J.Bhagiratha
Aged about 27 years, r/at
No.306, 10th B Cross road,
LIC flat, 1st phase,
Jeevan Surabhi,
1st phase, J.P.Nagar,
Bangalore-560 078.**

ORDERS ON I.A. UNDER ORDER VI RULE 17 R/W
SEC.151 OF CPC

The plaintiff's counsel has filed the above application to permit him to amend the plaint as sought for hereunder in the interest of justice.

I. Amendments/additions sought in the prayer:

10) The value of the suit for the purpose of the court fee and jurisdiction is valued under appropriate section of the KCF and SV Act as per annexed valuation slip and the appropriate court fee will be paid on the plaint accordingly.

II. Amendments/Additions sought in the prayer:

Wherefore, the plaintiff respectfully prays that this Hon'ble Court be pleased to pass a judgment and decree for Declaration and permanent injunction.

a) For declaration and permanent injunction, declare the plaintiffs are the absolute owners, and permanently restraining the defendants, his servants, agents, supporters and henchmen, from any way interfering with the peaceful possession and enjoyment of the schedule property by the plaintiff.

III. Amendments/additions sought in the schedule:

All that piece and parcel of the site bearing No.1272, Old No.159, measuring 70 feet, North to South 150 feet.

2. In the annexed affidavit, it is stated that plaintiffs have filed the suit for declaration and injunction. Due to inadvertence, some bonafide typographical mistakes were committed by his brother and it has escaped the sight of legal heirs of 2nd plaintiff as well as his advocate. Hence, prays to allow the application.

3. The defendant's counsel filed objections to the said application stating that the application is not maintainable in law. The plaintiffs have filed the suit for injunction and has paid Rs.25/- on the plaint valuing the plaint under Section 26(c) of Karnataka Court Fee and Suits Valuation Act and the same is reflected in the valuation slip and now mischievously plaintiff No.1 has sworn to the affidavit that the suit has gone unnoticed by him which is only a story

created by the plaintiff No.1. The plaintiffs were in hurry to obtain the decree in the present suit without serving the notice to defendants. The plaintiff No.1 has come up with the present application thereby changing the nature of the suit and its character from injunction to declaration and changing the suit schedule property also. Hence, prayed to dismiss the application.

4. Having heard the learned counsels on both sides, the following points arise for my consideration;

1. Whether the proposed amendment sought for by the plaintiff is necessary for proper adjudication of the matter ?

2. What Order?

5. My answer to the above points are as under ;

Point No.1: In the Negative

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1** : The plaintiffs have filed the suit for permanent injunction restraining the defendant,

her agents from anyway interfering with the peaceful possession and enjoyment of the suit schedule property and such other reliefs. The schedule property mentioned in the plaint is all that piece and parcel of the site bearing No.1272, old No.149, measuring East to West 150 feet, North to South 70 feet, situated at Vaddarpalya, Kothanur Dakhle, Uttarahalli Hobli, Bangalore South Taluk, Bangalore. In the amendment application, the plaintiffs have sought to change the measurement instead as East to West 70' instead of 150', North to South 150' instead of 70'. On reading of plaint at para No.2, it is stated that plaintiff's mother had purchased the site bearing No.1272, old No.159 measuring East to West 150 feet and North to South 70 feet. Nowhere in the plaint, they have stated that they are the absolute owners in possession of suit schedule property. According to plaintiffs, their mother purchased site i.e., suit schedule property. Further, the plaintiffs have not stated that whether their mother is alive or

not. According to plaint averments, the suit schedule property is not an ancestral property and it is only purchased by the plaintiff's mother. In the proposed amendment, plaintiffs have not taken specific pleadings with regard as to how they acquired the suit schedule property and whether they are owners of the suit schedule property. In the absence of the pleadings in the plaint averments, the proposed amendments cannot be looked into under the law, because there is no specific pleadings with regard to ownership of suit schedule property. In the written arguments, it is stated that plaintiff Nos.1 and 2 are the members of Hindu Undivided joint family possessing ancestral property and they are in joint enjoyment of the suit schedule property. However, the same contention is not taken either in the plaint averments or in the proposed amendment. Hence, the proposed amendment sought by the plaintiffs change the nature of the suit. Therefore, there are no

grounds to allow the application. Accordingly, I answer point No.1 in the Negative.

7. **Point No.2** : In the result for the foregoing reasons, I pass the following :

ORDER

**I.A. under Order VI Rule 17 R/w
Section 151 of Code of Civil Procedure
filed by the plaintiff to amend the plaint
is hereby dismissed.**

**In the circumstances, there is no
order as to costs.**

(Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in open court on this the 23rd day of June, 2017.).

**(NAGAVENI)
V ADDL.CITY CIVIL JUDGE
BANGALORE**

