

17/09/2018  
For orders,

**ORDERS ON I.A. NO.XXI UNDER ORDER VI**  
**RULE 17 R/W SEC.151 OF CPC**

The plaintiff counsel filed the above application praying to permit him to amend the plaint as mentioned in the application.

2. In the annexed affidavit, it is stated that deceased plaintiff namely Smt.Parvathamma filed the above suit against the defendants for the relief of declaration and injunction in respect of the schedule property. In the plaint presented by her by mistake she has stated that western portion of Sy.No.105/2 of Rachenahalli village was the property of Sri.Munikadrappa i.e., defendant No.4. After the death of his wife, very recently they came to know that defendant No.4 is not the owner of the western half portion of Sy.No.105/2 of Rachenahalli village and it was the property Smt.Putamma who purchased the same under a sale deed dated 13/01/1968 from Singappa. After coming to know of the same, it has become inevitable for him to seek amendment of the plaint so as to bring the said fact on record. Though the defendant No.4 was aware of the sale transaction dated 13/01/1968, he

deliberately has not brought the said fact to the notice of this Court. In order to keep the records straight the proposed amendment is just and necessary. Defendant No.4 is not the owner of the western half portion of land bearing Sy.No.105/2 of Rachenahalli had come to his knowledge only during the month of April, 2017. He was instructing his lawyer to draft written statement in O.S.No.8358/2016 filed by the 4<sup>th</sup> defendant against him and others in respect of land bearing Sy.no.105/2 of Rachenahalli village. While preparing written statement, his advocate directed him to verify the sale transaction dated 13/01/1968 in respect of western half portion of the land bearing Sy.No.105/2 of Rachenahalli. ON verification he came to know that Singappa had sold the western half portion of the land in favour of Smt.Puttamma. Thereafter, he obtained the certified copy of the same. Till then neither him nor his deceased wife had knowledge about the sale transaction dated 13/01/1968. Hence, prayed that allow the application.

3. The defendant No.8 counsel filed objections to the above application stating that application is not maintainable in the eye of law. Regarding removing of figures 1918/1968-69 on 6<sup>th</sup> line para 6 page 5 it is stated that no reason is assigned for change or substantiate the same. Regarding para No.ii of I.A.,

the amendment sought that 'one Mr.Singappa on 13/03/1968 sold the western half portion of land in Sy.No.105/2 measuring 23 guntas is as follows;

The reason assigned in affidavit is that after April 2017 the plaintiff obtained certified copy of the sale deed and till then nor he or his wife did now know about the document dated 13/01/1968, Whereas the copy produced before the Court apart from illegible and it is obtained in 2007-08, therefore reason assigned does not merit any consideration for amendment. If the amendment is allowed, the entire tenure and the very nature of the case originally set up by the plaintiff would be changed, for as per the original suit, the prayer pertains to perpetual injunction restraining the defendants from interfering with the plaintiff's schedule property and schedule property mentioned in O.S is eastern half portion of Sy.No.105/2 and now it is sought to be amended as western half portion of Sy.No.105/2. The evidence adduced by PW-1 also is for in respect of eastern half portion of Sy.No.105/2. If the Court allowed the prayer, the document bearing NO.4865/1968-69 the date of the sale deed is mentioned variously as 13/01/1968 in the 6<sup>th</sup> line of para 2 and again as 13/09/1968 in the 1<sup>st</sup> line of page 5 and again mentioned as 13/01/1969 in the 5<sup>th</sup> line of page 5. In para 3, 4 and 5 to I.A., it is

sought for amending into western boundary from eastern boundary and from belonging to Munikadarappa to Puttamma. Such amendment cannot be allowed as per catena of decisions rendered by various courts, which would prejudice defendant No.8. Hence, prays to dismiss the application.

4. Having heard the learned counsel, the following points arise for my consideration:

1. Whether the application under Order VI rule 17 R/w Sec.151 of Code of Civil Procedure deserves to be allowed ?
2. What Order?

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

Point No.1: In the Affirmative

Point No.2: As per final order  
for the following:

### **REASONS**

6. **Point No.1:** The plaintiff has filed the suit for permanent injunction and declaration relief in respect of the suit schedule properties. When the case was posted for further evidence of PW-1, at that time plaintiff counsel filed the above application praying to amend the plaint as mentioned in the

application. On perusal of proposed amendment, it reveals that plaintiff has sought to amend the boundaries and also numbers as mentioned the application. In my view the proposed amendment are necessary for the purpose of determining the real question in controversy between the parties and also avoid multiplicity of proceedings. The proposed amendment cannot change the nature of the suit. By allowing the said amendment, it would not cause prejudice to defendant. If the application is allowed on payment of cost, it would met with justice. Accordingly, I answer point No.1 in the Affirmative.

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

**ORDER**

**I.A. No.XXI under Order VI Rule 17 R/w  
Sec.151 of Code of Civil Procedure filed by the  
plaintiff is allowed on cost of Rs.1,000/-.**

**For costs and amend the plaint, call on by  
24/09/2018.**

(Dictated to the Judgment Writer, transcribed by her, corrected and then pronounced by me in open court this the 17<sup>th</sup> day of September, 2018.).

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