

KABG040000052019



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

PRESENT : Smt. Preeti L. Malavalli, B.B.A.,LL.B (Hons.)
Prl. Civil Judge & JMFC.,
Belagavi.

DATED THIS THE 11TH DAY OF JULY-2025

ORIGINAL SUIT NO.1/2019

PLAINTIFF :

1)	Smt. Pooja W/o. Umaji Patil, Age : 48 years, Occ : Govt. Servant, R/o : H.No.774, 2 nd Stage, Rani Channamma Nagar, Belagavi, Tal : & Dist : Belagavi.
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Vs.

DEFENDANTS :

1)	Mr. Arun S/o. Sharad Malavankar, Age : 54 years, Occ : Agriculture, R/o : 1320, 1 st Cross, Shivaji Road, Bhavani Nagar, Mandoli, Belagavi.
2)	Mrs. Mahananda W/o. Sharad Malavankar, Age : 52 years, Occ : Household works, R/o : 1320, 1 st Cross, Shivaji Road, Bhavani Nagar, Mandoli, Belagavi.

PARTIES TO I.A.NO.V**Applicant/Plaintiff :**

1)	Smt. Pooja W/o. Umaji Patil.
	(By Shri. R. C. Ingalagi, Adv.)

Vs.**Opponents/Defendants :**

1)	Mr. Arun S/o. Sharad Malavankar & another.
	(By Shri. S. G. Ganachari, Adv.)

1.	Provision under which application is filed	U/O.VI Rule 17 R/w. Sec. 151 of C.P.C.
2.	Relief sought for	Amendment of plaint
3.	The date on which the application is filed	07.08.2024
4.	Number of application	V
5.	The date on which the objections are filed by different opponent	19.09.2024
6.	The date on which the orders were passed on the said application.	11.07.2025

**ORDER ON I.A.NO.V FILED BY PLAINTIFF
UNDER ORDER VI RULE 17 R/W. SEC.151 OF
CODE OF CIVIL PROCEDURE**

This application is filed U/O.VI Rule 17 R/w. Sec.151 of C.P.C. by the plaintiff seeking amendment of plaint as stated in the application. Plaintiff has sought to amend the plaint as follows :

SCHEDULE OF AMENDMENT

I) *In Page No.1 of the plaint, in the cause title after the words 'suit for declaration and permanent injunction, add the words 'and mandatory injunction'.*

II) *After Para No.14 of the plaint in Page No.13, add the following paragraph as Para No.15.*

'During the pendency of this suit, these defendants tried to sell the suit property during November 2020, regarding which legal notices were issued and they were duly served upon them and they issued an evasive reply. During December 2021, these defendants by using JCB machine tried to level the suit property in order to prohibit the entry and exit of the plaintiff and her tenants from the western side regarding which a police complaint was came to be lodged before the P.S.I., B.R.P.C. Vadgaon, Belagavi and they have issued acknowledgment. Further during December 2022, these defendants have changed the nature of

the suit property, regarding which positive photographs are produced. During January 2023, these defendants tried to construct a compound wall towards western side in the suit property, regarding which a complaint was lodged by the plaintiff before the Commissioner of Police Belagavi City, Belagavi and thereafter B.R. Police, Belagavi have issued an acknowledgment. Again during October 2023, these defendants ploughed the suit property and changed its nature regarding which positive photographs are produced. Again when these defendants tried to pick up a quarrel with the plaintiff, abused and threatened her and tried to change the nature of the suit property, she got issued legal notices which are duly served upon them. Again during July 2024, these defendants fenced the suit property and thereby prohibited the entry and exit of the plaintiff and her tenants from the western side. Regarding which the plaintiff has produced positive photographs.'

III) In Page No.14 of the plaint at Para No.IX of the Court fee column, in the last 2nd line, after the words permanent injunction, the relief of 'Mandatory Injunction' to be added.

IV) In Page No.15 after prayer b), add the following prayer ;

'bb) The defendants may be directed to remove the fencing of the suit property by way of mandatory injunction.'

2. In the affidavit annexed to the application, it is stated that the present suit is filed against the defendants for the relief of declaration and permanent injunction in respect of suit property and at the time of filing the suit, the plaintiff has narrated all the facts and circumstances of the case, but however the defendants tried to sell the suit property during the pendency of this suit and the plaintiff got issued notices to defendants on 04.11.2020 and again in December 2021 the defendants tried to level the suit property by using JCB and in December 2022 the defendants tried to prohibit the entry and exit of plaintiff from western side of suit property. That during January 2023 the defendants committed criminal trespass and forcibly ploughed the suit property and tried to put up compound wall in order to prohibit entry and exit to the plaintiff. That during October 2023 the defendants again tried to prohibit the entry and exit to the suit property and the plaintiff got issued legal notice to the defendants and further in July 2024 the defendants have fenced the suit property and prohibited the entry and exit from western side of suit property to the plaintiff. It is further stated that the defendants are threatening the plaintiff and changing the very nature of suit property and now the defendants have fenced the suit property and prohibited the plaintiff's entry and exit towards western side. That these are the subsequent developments that have taken place during pendency of this suit and the plaintiff is intending to bring the same to the knowledge of

this Court and as such it is very much necessary to amend the cause title, pleading and prayer column of the plaint. It is stated that the proposed amendment would not cause any loss or hardship to the other side. On these grounds, the plaintiff has prayed to allow the application.

3. Per contra, the defendants have filed objection to the said application on the ground that there is no grain of truth and sanctity involved in the allegations made by the plaintiff and by the proposed amendment, the plaintiff is intending to introduce new facts and cause of action. The plaintiff will have to establish her title over the suit property and in the absence of the same, the plaintiff has no locus-standi to seek the proposed amendment. That the relief of mandatory injunction sought by proposed amendment is based on different cause of action alleged by the plaintiff in the proposed amendment and therefore this Court cannot entertain the application filed by plaintiff which would alter the cause of action. That the proposed amendment is devoid of merits and the plaintiff is trying to protract the proceedings. The conduct of plaintiff in moving the application at belated stage has to be seen since the evidence has already begun in the suit and the defendants will suffer great and irreparable loss if the present application is allowed. On these grounds, the defendants have prayed to dismiss the present application with costs.

4. On the basis of said application and objection, the following points arise for my consideration :

1) Whether the applicant/plaintiff has made out grounds to allow the application ?

2) What order ?

5. My answer to 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 : This suit is filed for the relief of declaration and permanent injunction against the defendants. The plaintiff has sought proposed amendment to the plaint. Per contra, the defendants have objected the proposed amendment on the grounds stated above.

7. Under Order VI Rule 17 of C.P.C., Court's discretion to grant permission for a party to amend his pleading can be exercised, firstly, where no injustice is done to other side and secondly, the amendment being necessary for the purpose of determining the real question in controversy between the parties also keeping in view the proviso under Rule 17 of Order VI of C.P.C. Even after commencement of the trial, the amendment can be permitted, if it is shown that inspite of due diligence, the

applicant could not have raised the matter, earlier to the stage of commencement of the trial.

8. The suit is filed for the relief of declaration and permanent injunction against the defendants. Now the plaintiff is intending to amend the plaint and insert the relief of mandatory injunction by adding few averments in the plaint which are said to be subsequent developments in the case. According to plaintiff, after institution of suit in the year 2019, the defendants tried to sell the suit property and the plaintiff issued notice to the defendants, and again in the month of December 2021 and in December 2022, the defendants tried to level the suit property by using JCB and they tried to prohibit the entry and exit towards western side of suit property. The plaintiff is intending to amend the plaint and add the relief of mandatory injunction for direction to defendants to remove the fencing of the suit property, since according to plaintiff, in July 2024 the defendants have fenced the suit property and thereby prohibited the entry and exit of plaintiff to suit property towards its western side.

9. But, the defendants have filed detailed objection to the said application stating that the plaintiff is intending to introduce new facts and also new cause of action in the suit and in the absence of any title established over the suit property by the plaintiff, she cannot claim the relief as per the proposed amendment. The defendants have further contended that the plaintiff is trying to

protract the proceedings and cause delay and also she has filed the present application at belated stage when the evidence of plaintiff has already commenced and as such the application deserves to be rejected. Even in the course of his arguments, the learned counsel for defendants stated that the suit is of the year 2019 and the incidents alleged in the present application have taken place in the year 2020 itself and now after lapse of about five years, the plaintiff is intending to amend her plaint and it can be made out that the plaintiff has not availed the first available opportunity to amend the plaint. He has further argued that if the relief of mandatory injunction is to be inserted as sought by plaintiff, then she has to first establish her title over the suit property and further that the said relief is now time barred.

10. It is pertinent to note that the present suit is filed by plaintiff against the defendants in the year 2019 by seeking the relief of declaration that the suit property has been kept for common usage of plaintiff and other adjoining neighbours and they are having easementary right over the same and consequential relief of permanent injunction to restrain defendants from disturbing the plaintiff's usage of suit property. It is further pertinent to note that the suit property is described as 22 feet X 100 feet road in R.S. No.95/3 of Bhavani Nagar and the plaintiff is claiming easementary right over the same and claims that she has right to use the said road. However, the proposed amendments sought to

be inserted in the plaint are regarding the subsequent events that have taken place with respect to the suit property. No doubt, the suit is of the year 2019 and few proposed amendments are regarding the incidents of the year 2020 to 2023, but at the same time it has to be seen that the act of defendants alleged to have been done in July 2024 by fencing the suit property is the act which is said to have caused hardship to the plaintiff and which according to plaintiff has led her to seek the proposed amendment seeking the relief of mandatory injunction to remove the said fencing. As such, it cannot be said that the cause of action to file the suit would itself change if the said relief is inserted. Moreover, delay cannot determine the fate of a case in all cases, more so when non-allowing of the proposed amendment would lead to multiplicity of proceedings between the parties. Though the contention of defendants that the plaintiff has filed the application after commencement of trial is true, it has to be seen that the plaintiff also could not have raised and inserted the proposed amendment at the time of filing the suit, because according to plaintiff, the defendants have fenced the suit property only in the month of July 2024 which is subsequent to filing of the present suit. In this regard, the Hon'ble Apex Court in **Rajesh Kumar Aggarwal and others Vs. K. K. Modi and others (Civil Appeal No.5350-5351/2002)** has held that *where cause of action arises during pendency of the suit, the proposed*

amendment ought to be granted because the basic structure of the suit has not changed and there is merely change in the nature of relief claimed. It is further held that if it is permissible for the applicant to file an independent suit, why the same relief which could be prayed in the new suit cannot be permitted to be incorporated in the pending suit. It is further held that the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice and the Courts while deciding such applications should not adopt hypertechnical approach, instead liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Hence, in the present case also, the proposed amendment being with respect to the subsequent events which have given rise to new cause of action to claim the relief of mandatory injunction, it needs to be allowed in order to avoid multiplicity of proceedings and to aid this Court in determining the rights of parties finally and effectively.

11. The learned counsel for defendants has relied on the decision of the Hon'ble Apex Court in **Basavaraj Vs. Indira and others**, reported in **(2024) SCCR 294**, wherein it is held that *the burden is on the party seeking amendment after commencement of trial to show that inspite of due diligence, such amendment could not be sought earlier and the application seeking amendment may be rejected if it seeks to introduce totally new,*

different and inconsistent case. He has also relied on another decision of the Hon'ble Apex Court in **Dinesh Goyal Alias Pappu Vs. Suman Agarwal (Bindal) and others**, reported in **AIR 2024 SCC 4779**, wherein it is clearly held that *the Court should adopt liberal approach in granting leave to amend pleadings, but it should not be in contravention of statutory boundaries placed on such power.* It is also held that *not in all cases the delay can determine the fate of a suit.* The aforesaid principles which are enumerated in the aforesaid cases if applied to the present case, then the proposed amendment deserves to be allowed, because the proposed amendment will not result in contravention of statutory provisions since the plaintiff could not have raised the matter of alleged fencing made by defendants in the year 2024, at the time of filing the suit in the year 2019 and as such inspite of due diligence on the part of plaintiff, she could not have sought the proposed amendment regarding the relief of mandatory injunction earlier.

12. It is well settled that the merits of amendment cannot be gone into at the stage of considering the application for amendment. However, it is for the plaintiff to prove her case by producing cogent evidence during the course of trial. It is also for the plaintiff to make proper valuation of the suit for the purpose of Court fee once the proposed amendment will be allowed. The merits of said contentions and also the contentions taken in

proposed amendment cannot be decided at this stage. Hence, the proposed amendment deserves to be allowed in the interest of justice. The proposed amendment is necessary for complete adjudication of the matter and in order to avoid multiplicity of proceedings between the parties. As such, the proposed amendment deserves to be allowed, hence, I answer **Point No.1 in the Affirmative.**

13. Point No.2 : For the above said discussion on Point No.1, I proceed to pass the following :

ORDER

The application i.e., I.A.No.V filed by applicant/plaintiff U/O. VI Rule 17 R/w. Sec.151 of C.P.C. is hereby allowed.

The plaintiff is hereby directed to carry out amendment and to file amended plaint and thereafter the plaintiff shall pay Court fee on the relief of mandatory injunction and file fresh valuation slip in respect thereof.

(Dictated to the stenographer directly on computer, revised by me & after corrections pronounced in the open Court on this the **11th day of July-2025.**)

(Smt. Preeti L. Malavalli)
Prl. Civil Judge & JMFC, Belagavi.