

IN THE COURT OF CIVIL JUDGE & J.M.F.C.,
AT SANDUR.

Present : Md. Shaiz Chouthai,

B.A.,LL.B. (Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 19th day of September, 2025

O.S. No. 162/2021

Plaintiff/s : Smt. Basamma W/o late Venkatesh
and Another.

(By Sri. T.M.S., Advocate)

V/S

Defendant/s : Smt. Sulochana W/o Palaksha,
and Others.

(D-1 & D2 By Sri. A.V.K., Advocate)

(D-3 & D4 By Sri. A.G.P.)

I.A. NO. VIII

Applicant : Smt. Basamma W/o late Venkatesh
(Plaintiff No.1)

V/s

Opponent/s : Smt. Sulochana W/o Palaksha,
and Others.
(Defendants)

ORDER ON I.A. NO. VIII FILED UNDER ORDER VI RULE 17
R/w Sec. 151 of C.P.C.

The instant application is filed by the plaintiff No.1 under Order VI Rule 17 R/w Sec. 151 of C.P.C. seeking amendment of plaint by insertion of additional para No.3(1) and para No.3(2). The application is filed on 29.01.2025 when the matter was posted for plaintiffs evidence.

2. It is contended that during the pendency of the suit, the defendant No.1 and 2 were running Dhaba hotel and were selling liquor without any license by encroaching upon the property of the plaintiffs which is described as plaint schedule "B" property. Now, the defendant No.1 and 2 have removed the Dhaba and running puncher shop without obtaining license from the competent authority. The defendant No.1 and 2 are in unauthorized occupation of plaint schedule "B" property.

3. It is further stated that the land bearing Sy. No.21/1, measuring 1.76 acres originally belong to one Yellamma W/o

Devanna. The said land was given in favour of said Yellamma as Raithwari Patta to the extent of 2.93 acres. After her death, the property came to be mutated in the name of one Lokaraj and Venkatesh who are sons of Hanumanthappa vide MR No.1/1996-97 Dt. 19.02.1997. The said Lokaraj is the husband of plaintiff No.2 and the Venkatesh is the husband of plaintiff No.1. It is further contended that the above mentioned land was acquired by the Assistant Commissioner, to the extent of 1.14 acres. The remaining extent of 1.76 acres is jointly in the name of Venkatesh S/o Hanumanthappa and plaintiff No.2. The plaintiffs are in peaceful possession and enjoyment of the suit property. The plaintiffs alleged that the defendants have encroached upon their property which is described as plaint schedule "B" property.

4. The applicant / plaintiff No.1 intend to infuse the above facts in their plaint as para No.3(1) and 3(2). According to applicant, the proposed amendment is necessary to be incorporated, for which, no hardship or irreparable loss will be

cause to the defendants. Amongst other grounds, she prays to allow the application.

5. The learned counsel for defendants filed objections to the application denying the contents of the application. It is submitted that the plaintiffs are not the owner of the suit schedule property. The application is filed after lapse of 4 years. The proposed amendment will change the cause of action. On these grounds, they prayed to dismiss the application.

6. The following points that arise for my consideration:

1. Whether the amendment sought is necessary for adjudication of matter in controversy ?
2. What order?

7. Heard learned counsel for plaintiffs and defendants.

Perused the records.

8. My answer on the above points are as follows:-

Point No.1 : In the Affirmative

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

REASONS

9. **POINT NO.1:** This is a suit filed by the plaintiffs for the relief of declaration of ownership in respect of “A” schedule property and for recovery of possession of “B” schedule property, for permanent injunction and for damages. The suit property is the landed property bearing land Sy. No.21, measuring 1.76 acres, situated at Lingadahalli village, Sandur taluk.

10. The defendants appeared and contested the suit by filing written statement. Thereafter, this court framed issues casting burden on the plaintiffs and defendants. However, the trial has not yet commenced. The issues involved in the suit are complex in nature. The plaintiffs have alleged in their plaint that the defendants are running hotel in the encroached portion of their property described in the plaint “B” schedule. But during the pendency of the suit, the defendants alleged to have modified the structure in “B” schedule property by removing the hotel and by

running puncher shop. The plaintiffs also intend to describe how they acquired the suit property. Both these material facts are very much necessary for adjudication of the matter in controversy between the parties. The defendants have not taken strong grounds seeking rejection of the application. By allowing the application, the parties will be placed in the same position. The defendants will not suffer injury or hardship if the application is allowed. So because, the plaintiffs have not yet commenced evidence. Therefore, in order to avoid multiplicity of the suit, the application deserves to be allowed since it is very much required for adjudication of the matter in controversy between the parties. As such, this court answers Point No.1 in the **Affirmative**.

11. **POINT No.2:** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A.No.VIII filed U/O. VI Rule 17 R/w Sec.
151 of C.P.C. by the applicant is hereby
allowed.

The plaintiffs shall carry out necessary amendment and file amended plaint.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 19th day of September 2025)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.