

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

Dated this the 18th day of April, 2024.

**Present : Sri. Devaraddy, B.A., LL.B, LL.M.
Civil Judge & JMFC., Sandur.**

O.S. No. 110/2019

Plaintiffs : Thippeswamy by GPA holder O.
Rudramuni and Another.

V/S

Defendants : The Deputy Commissioner Ballari and
Others.

I.A. No. V

**Applicants/
Plaintiffs** : Thippeswamy by GPA holder O.
Rudramuni and Another.

(By Sri. H.K.B. Advocate)

V/S

**Opponents/
Defendants** : The Deputy Commissioner Ballari and
Others.

**(D-1 & 2 by Sri. A.G.P.
D-3 & 4 by Sri. B.S.L. Advocate,
D-5 to 32 by Sri. M.B.H. Advocate)**

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ORDERS ON I.A. No. V

The General Power of Attorney Holder of plaintiff
No.1 / applicant has filed this application U/o VI Rule 17

R/w Sec. 151 of C.P.C., for seeking permission to amend the plaint.

2. The said application filed by accompanying affidavit and in the affidavit it is stated that, he is the General Power of Attorney Holder of plaintiff No.1 and he has acquainted the facts of the case. Further stated that they have filed the suit against the defendants for the relief of declaration and other relief with respect to suit schedule property. Now the case is posted for cross-examination of P.W.-1. Due to mistake, at the time of filing the suit, they have not mentioned the boundaries and numbers of the defendants properly and also construction of the houses in the schedule property, for which, filed this application to amend the plaint. Further stated that proposed amendment will not change the cause of action and nature of the suit. Further stated that if the application is allowed no injury and hardship will be caused other side. On the other hand, if the application is not allowed then he will be put great

hardship and injury. Hence prays to allow the application.

3. The learned counsel for the defendant No.5 to 33 filed objection by denying the averments on this application and further submits that present application filed by the plaintiffs is not maintainable either in law or on facts. The defendants have stated in their written statement that they are in possession and enjoyment of their respective houses which are constructed under Ashraya scheme and they have paid tax to the concerned authorities. Further submits that plaintiffs filed this suit with an intention to harass the defendants. Further submits that they have denied the boundaries of the suit schedule property in their written Statement.If the application is allowed then the defendants will be put great hardship and injustice. Hence prays to dismiss the application with costs.

4. Heard on IA No.V by both side.

5. Based on the contents of the present application and objection, the following points arise for consideration;

1. Whether the amendment sought by the General Power of Attorney Holder of plaintiff No.1/applicant is necessary to determine the real question involved in the suit?

2. What order?

6. Based on the pleadings and materials available on record, the aforementioned points answered as under :

Point No.1 : In the **Affirmative.**

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

REASONS

Point No.1 :

7. The plaintiffs have filed the present suit for the relief of declaration and mandatory injunction with respect to suit schedule property. Now the plaintiffs also filed this application to amend the plaint as ;

SCHEDULE

1) At page No.4 in para No.2 in 4th line after the word the defendants, delete the number 5 to 33 and add in its place as 5 to 32.

2) At page No.4 in para No.4 in 2nd line after the word the defendants, delete the number 5 to 33 and add in its place as 5 to 32.

3) At page No.5 in para No.5 in 18th line after the word the defendants, delete the number 5 to 33 and add in its place as 5 to 32.

4) At page No.6 in 4th line after the word the defendants, delete the number 5 to 33 and add in its place as 5 to 32.

5) At page No.7, in 1st line after the word the defendants, delete the number 5 to 33 and add in its place as 5 to 32.

6) Add in para No.6 at page No.6 after the word defendant No.1 to 32 are also illegal add southern portion of the said Sy. No. 454/a, total extent 4.29 acres illegally constructed 0.50 acres in the same suit land and in Sy. No. 454/B extent 0.51 acres out of 1.51 acres illegally constructed the houses towards western portion in the same suit land.

7) Delete the entire schedule and add in its place as the agricultural properties situated in Yarrayyanahalli Grampanchayat in Swamyhalli village in Sandur Taluk, Ballari District, within the registration district of Ballari and sub-registration district of Sandur and add the survey numbers and boundaries in the schedule in the plaint at page No.7. After the verification.

The land bearing Sy. No. 454/A, extent 0.50 acres southern portion D-5 to 32 illegally constructed the houses out of 4.29 acres bounded as follows:-

East	: Land of Sanna Hanumanthappa.
West	: Land of Thimma Reddy.
North	: Railway Road.
South	: Land of Thippeswamy of Sy. No. 454/B

The land bearing Sy. No. 454/B, extent 0.51 acres western portion D-5 to 32 illegally constructed the houses out of 1.51 acres bounded as follows:-

***East : Land of Dinesh.
West : Land of Srinivasa Reddy.
North : Land of Manjunatha.
South : Road.***

8. The learned counsel for plaintiffs submits that due to oversight has not mentioned boundaries properly and number of the defendants at the time of filing the suit. Further submits that the said mistake was with bonafide reasons but not intentional one. Further submits that proposed amendment will not change the nature of the suit and cause of action. Further submits that if the application is not allowed then the plaintiffs will be put to great hardship and injustice. Hence prays to allow the application.

9. The learned counsel for the defendant No.5 to 33 submits that the proposed amendment will be changed nature of the suit and cause of action. Further submits that if the application is allowed then the defendant No.5

to 33 will be put great hardship and injustice. Hence, prays to dismiss the application.

10. The plaintiffs have filed the present suit for the relief of declaration and mandatory injunction and now this application filed for seeking permission to amend the plaint. By considering the pleadings, affidavit of the present application and also objection filed by the defendant No.5 to 33, it shows that the proposed amendment is just and proper to adjudicate the matter finally and in order to avoid multiplicity proceedings of the case. Further it reveals that proposed amendment will not change the nature of the suit and cause of action.

11. This court relied on the decision reported in **(2015) AIR (SC) 2270, Mahila Ramkali Devi and Others V/S Nandram and Others**, in this case the Hon'ble Supreme Court, has held that,

***Civil Procedure Code, 1908-Order 6, Rule 17-
Amendment of plaint-Parameters-Power to grant***

amendment to pleadings is intended to serve needs of justice and is not governed by any narrow or technical limitations – Rules of procedure are intended to be a handmaid to administration of justice – A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure-Court always gives relief to amend pleading of party unless it is satisfied that party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by order of cost.

In the above case, the Hon'ble Supreme Court held that court always gives relief to amend pleading of party if proposed amendment is filed with bonafide intention and it is not caused injury to opponent side. On perusal of contents of the affidavit of the present application it shows that the present application filed with bonafide intention to decide the matter finally.

12. In the said application the plaintiffs have sought for proposed amendment since due to oversight has not mentioned the boundaries and number of the defendants properly. On perusal of pleadings and materials available

on record, it shows that if the proposed amendment is allowed no injustice will be caused to other side and not changed any cause of action and also nature of the suit. It is further revealed that it is just and necessary to allow the application for effective adjudication of the case and in order to avoid multiplicity of the proceedings of the case.

13. By going through above discussion and grounds, this court has come to conclusion that the proposed amendment is required to decide the matter in dispute finally between the parties and avoid the multiplicity proceedings of the case. Hence, Point No.1 is answered in the **Affirmative**.

Point No.2 :

14. For the reasons discussed above, proceed to pass the following:

ORDER

I.A. No.V filed by the General
Power of Attorney Holder of plaintiff

No.1 / applicant U/o VI Rule 17 R/w
Sec. 151 of C.P.C., is hereby allowed.

Further plaintiffs permit to amend
the plaint as sought in the said
application.

No order as to costs.

[Dictated to the Stenographer, transcribed by him, corrected
by me and then pronounced in the open court on this day of
18th day of April, 2024]

(Devaraddy)

Civil Judge and J.M.F.C.,
Sandur.