

: ORDER ON IA NO. V :

Provision under which application is filed : U/O 6 Rule 17 R/w sec.151 of CPC

Relief sought for : Amendment of plaint

Date of filing the application : 15.10.2024

Number of the application : I.A No.5

Date of filing objections : 29.10.2024

Date of pronouncement of the order : 10.12.2024

The plaintiffs have filed this application U/o 6 Rule 17 R/w Sec.151 of CPC seeking permission to amend the plaint as per proposed amendment slip. This application is filed when the case is posted for further chief of PW.1 i.e., after commencement of evidence.

2. In support of this application, plaintiff No.2 has sworn to an affidavit stating that, he is swearing to this affidavit on behalf of himself and also on behalf of other plaintiffs. They have filed this suit for declaration of ownership of suit properties bearing CTS No.2947 and 2950 and it is their case that, same belongs to them and defendants have encroached to an extent of 176 sq. mtr in CTS No.2947 and to an extent of 144.37 sq. mtr in CTS No.2950. The same is illegal and they had filed suit bearing O.S No.19/1981 for eviction of the father of defendants and there are several litigations between them. It is submitted that, he has traced the order copy wherein, the order is passed by ADLR, Jamkhandi in CTS AP No.2/81 dated 26.11.1981 and informed the Assistant Commissioner, Jamkhandi that, properties at CTS No.2947 & 2950 are private properties and CTS No.2948 is a property of CMC and stated that, father of present defendants has made encroachment and hence, directed CTS office and Tahsildar to take action to remove encroachment. The father of defendants had filed appeal in

CTS appeal No.16/82 and AC, Jamkhandi was directed to get the lands and said CTS plots surveyed and fix the boundaries to ascertain encroachment and accordingly, AC, Jamkhandi has passed order on 17.07.1986 directing CTS officer Rabkavi - Banahatti to remove encroachments made by the father of defendant in the suit property. In spite of the said orders, concerned CTS and CMC authorities have not taken any action for removal of encroachment and no action was taken against the father of defendant. Now defendants are trying to interfere with the possession and enjoyment of suit properties of plaintiffs and as there is no pleading in respect of the said orders, they have filed this application seeking permission to amend the plaint as per proposed amendment slip. It is submitted that, proposed amendment is necessary for the adjudication of this suit on merits and it will not change the nature of suit. If the application is allowed, no harm or loss would be caused to defendant No.3 and on the other hand, if the application is rejected, plaintiffs would be put to irreparable loss and injury. Hence, prayed to allow the application.

3. On the other hand, learned counsel for defendant No.1 & 2 opposed the application by filing statement of objection and contended that, proposed amendment is not all necessary for determination of real controversy between parties and plaintiffs have filed this application with malafide intention to drag the case and moreover, subject matter of this suit as well as the proposed amendment is already decided by Hon'ble Apex court of India and hence, the same is barred under law. The proposed amendment will change the nature of suit and also the cause of action and the same is not permissible under law. On these grounds, prayed to reject the application.
4. Heard both sides and perused the materials on record.
5. The points that would arise for my consideration are as under:
 1. Whether plaintiffs have made out grounds to allow the application?

2. What order?

6. My answers to the above points are as under:

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

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

: R E A S O N S :

7. **Point No.1:** Plaintiffs have filed this suit against defendants for the relief of declaration, possession and injunction. This application is filed by plaintiffs seeking permission to carry out amendment to the plaint as per proposed amendment slip and have intended to include the order passed by ADLR, Jamkhandi, order of AC, Jamkhandi and the act of non-compliance of the orders by defendant No.3 and CMC authorities. On the other hand, defendant No.1 & 2 have opposed the application stating that, same is time barred and it is not required for the adjudication of this suit and moreover the same is adjudicated by Hon'ble Apex court and moreover, it will change the nature of suit and plaintiffs have filed this application only to drag the proceedings.
8. In support of this application, learned counsel for plaintiffs has relied on decisions reported in **2023(3) KCCR 2485** between **Meenakshi & others Vs. H. Nagarathnamma & others** and in **2023(1) KCCR 1 (SC)** between **Life Insurance Corporation of India Vs. Sanjeev builders Pvt. Ltd., & another**. On the other hand, learned counsel for defendant No.1 & 2 has relied on decisions reported in **2024 SAR (Civ) 1185** between **Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) & others** and in **2024 SAR (Civ) 1192** between **Shyamsundar Radheshyam Agarwal & another Vs. Pushpabai Nilkanth Patil & others**. I have gone through both the decisions.
9. In the light of the principles and guidelines given in the above decisions, on perusal of entire materials on record, it is clear that, amendment is permissible even

after the commencement of trial and when the applicant shows reasonable cause and in the instant case, the contention of defendant No.1 & 2 that, subject matter of suit including the proposed amendment already decided by Hon'ble Apex court cannot be adjudicated at this instant stage. The question of barred by law is also triable issue and it is observed that, plaintiffs have sought for the relief of possession and hence, if the application is allowed, no harm or loss would be caused to either parties and if the application is rejected, plaintiffs will be put to irreparable loss and injury and the same cannot be compensated in any terms. Moreover, defendants will have every opportunity to cross examine plaintiff witnesses with regard to proposed amendment if required. On careful perusal of the contents of proposed amendment slip, it is observed that, proposed amendment will not change the nature of suit and cause of action and it will not introduce any new facts. It is a settled principle that, amendment can be allowed when the same is not changing the nature of suit and cause of action. It is true that, evidence of plaintiffs is already commenced and this alone is not a ground to reject the application as the trial is not yet concluded. As the proposed amendment will not change the nature of suit, the application filed by plaintiffs deserves to be allowed. Hence, in order to avoid multiplicity of proceedings and to meet the ends of justice and to accord equal opportunities to both parties, it is just and necessary to permit plaintiffs to carry out amendment as prayed in the application. Accordingly, point No.1 is answered in the Affirmative.

10. **Point No. 2:** For the forgoing reasons, I proceed to pass the following:

: O R D E R :

I.A No.5 filed by plaintiffs' U/o 6 Rule 17 R/w sec.151 of CPC is hereby allowed.

Plaintiffs are permitted to carry out amendment to the plaint as per proposed amendment slip and file amended plaint.

O.S No.17/2021

For amendment and amended plaint.

Call on: 27.01.2025.

Civil Judge & JMFC, Banahatti.