

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC, ANEKAL.

09th day of June 2025

PRESENT: Sri. Shankarareddy.D.V., L.L.B., PGD in IR & PM.,
Prl. Civil Judge and JMFC, Anekal.

OS.No. 326/2010

Plaintiff : P Kantharaju

V/s.

Defendant : S.Savitha and another

IA No.IX

Plaintiff/ Applicant : P Kantharaju

V/s.

Defendant/Opponent : S.Savitha and another

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ORDERS ON IA No.IX

The plaintiff has filed the present application U/o. VI Rule 17 of CPC seeking permission to incorporate the following proposed amendment in the plaint.

Proposed Amendment is set out hereunder:-

1. To add prayer 1 and 2 before prayer 'A' in the prayer column.
2. To declare that the plaintiff is the absolute owner of "A" suit schedule property.

3. To grant decree of Mandatory Injunction directing the defendants to demolish the illegal constructions measuring 4 : 5 feet, towards the eastern side of the “A” suit schedule property constructed by the defendants by encroaching the portion of the “A” suit schedule property.

2. In the affidavit annexed to the present application, plaintiff stated that he is owner of suit “A” schedule property and towards eastern-side of “A” schedule property, the suit “B” schedule property is in existence.

It is further stated that towards eastern side of “B” schedule property the defendants property is in existence. The defendants have no manner of right, title or interest over the ‘B’ schedule property i.e., conservancy lane. That being the case, defendants encroached and put-up construction on “B” schedule property. For the said act of the defendants, plaintiff deprived from natural light and air to his property/house. Hence, plaintiff constrained to file the present suit to declare that suit “B” schedule property is conservancy lane and construction over the “B” schedule property by the defendants is illegal and to direct

the defendants to demolish the structures on “B” schedule property.

It is further stated that, the defendant No.2 set up the counter claim that the plaintiff encroached the conservancy lane i.e., ‘B’ schedule property and put up construction thereon and sought the relief of mandatory injunction. To which, the plaintiff filed rejoinder, but inadvertently did not seek the relief of declaration of title in respect of suit ‘A’ schedule property and mandatory injunction in respect of encroached land of his property ie., ‘A’ schedule property. Therefore, he constrained to file the present application for the aforesaid relief.

3. The defendant No.2 opposed the present application by filing objection, wherein defendant No.2 denied the averments of present application and contends that if proposed amendment is allowed, then nature of the suit will be changed and further he contends that the plaintiff filed the present application after conclusion of evidence with an intention to fill up the lacuna and thereby the present application is barred by limitation. Accordingly, the defendant No.2 prayed to dismiss the present application with cost.

4. Having heard both side and on perusal of material available on record, the following points arise for consideration;

1. Whether plaintiff has made out valid grounds to allow the present application?
2. What order?

5. On appreciation of material available on record, the above points are answered 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's case is that he is the owner of suit "A" schedule property and towards eastern-side of "A" schedule property conservancy lane is in existence ie., suit "B" schedule property and towards eastern side of "B" schedule property the defendants property is in existence and defendants encroached the conservancy lane ie., "B" schedule property and put up construction thereon and for the said act of the defendants, the plaintiff deprived from natural light and air to his property/house. Therefore, the plaintiff constrained to file the present suit for declaration and mandatory injunction.

7. The case of the defendants is that the plaintiff encroached the conservancy lane ie., “B” schedule property and put up construction thereon and they also denied the plaintiff averments and defendant No.2 set up counter claim praying to direct the plaintiff to demolish the illegal construction put up on “B” schedule property. The said counter claim opposed by the plaintiff by filing rejoinder, wherein he denied the averments of counter claim and claimed that he is the owner of “A” schedule property and the defendants encroached portion of ‘A’ schedule property and he has not encroached any portion of “B” schedule property. Now, in the the present application the plaintiff contends that he inadvertently not claimed relief of declaration and mandatory injunction in respect of “A” schedule property. Hence, he constrained to file the present application for the aforesaid relief.

8. In the plaint and rejoinder, the plaintiff clearly set up his plea that he is the owner of suit ‘A’ schedule property and portion of the same encroached by the defendants and put up construction thereon. At the first instance, the defendants not set up any counter claim and on 26-08-2021 the defendant No.2 set

up counter claim of Mandatory Injunction and in continuation of the same additional issue also framed on 13-07-2023. In the counter claim, the defendant No.2 disputed the title and measurement of suit "A" schedule property and to the said counter claim the plaintiff herein filed rejoinder by pleading his source of title in respect of "A" schedule property, but the plaintiff did not seek the declaration to title in respect of suit 'A' schedule property at the time of filing of rejoinder.

When the defendant No.2 seriously disputed the plaintiff's title and measurement in respect of suit "A" schedule property in his counter claim, then the relief of declaration of title in respect of suit "A" schedule property would be relevant for consideration. Otherwise, dispute between plaintiff's and defendants cannot be decided completely and effectively and it leads to enlarge the litigation between the parties. On the other hand, if plaintiff's ownership in respect of "A" schedule property is decided in the present suit, no injustice would be caused to the defendants or any other person ; rather it would minimize the litigation between the parties.

Further it is relevant state here that at the first instance the defendant No.2 not set up any counter claim and he set up counter claim on 26-08-2021 and at that point of time only the defendant No.2 denied the plaintiff's ownership and measurement in respect of suit 'A' schedule property. To the said counter claim, the plaintiff has filed the rejoinder/reply, but wherein the plaintiff not sought the relief of declaration. Nonetheless, limitation is three years to seek the relief of declaration from the date of cause of action. In the case on hand, cause of action to seek the relief of declaration arose on 26-08-2021 on seeking the counter claim and the plaintiff filed the present application within three years from 26-08-2021. Therefore, the relief of declaration and mandatory injunction as sought by the plaintiff in the present application not barred by limitation.

Further, when defendant No.2 denied the measurement and ownership of plaintiff in respect of "A" schedule property and when defendant No.2 set up counter claim, then the additional reliefs i.e., declaration of title and Mandatory Injunction as sought in the present application by the plaintiff are

determinable factors and without deciding the same, dispute between the parties cannot be decided effectively and completely. Therefore, the proposed amendment helps to the court to decide the dispute between parties completely and effectively. On the other hand, by allowing the present application, some delay may be caused to the defendants for disposing the matter finally, but same can be compensated by awarding reasonable cost in favour of defendants. With this discussion, this court of the view that the proposed amendment to be allowed in order to render complete justice between the parties to the *lis*. Thus, this court opines that the plaintiff has made out valid grounds to allow the present application. In the result, point No.1 answered in the affirmative.

9. Point No.2: For the reasons assigned in point No.1, this court proceeds to pass the following:-

ORDER

IA No-IX filed by the plaintiff under Order VI Rule 17 of CPC is hereby allowed subject to cost of Rs.1,000/- and same shall be paid to the defendants by the plaintiff.

Accordingly, the plaintiff is permitted to carryout amendment and file amended plaint within 14 days in office.

(Directly dictated to steno, corrected, signed and pronounced by me in Open Court on this the 09th day of June 2025.)

(Sri. Shankarareddy D.V)
Prl. Civil Judge & JMFC., Anekal.