



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
MUDIGERE

PRESENT : Sri.Sachin.D. B.A.,LL.B.,
Prl.Civil Judge & JMFC.,
Mudigere.

DATED THIS THE 20th DAY OF JANUARY 2024

ORIGINAL SUIT.No:59/2022

BETWEEN :

Smt.Girija W/o Manjappa Gowda,
Aged about 59 years,
R/o Mungadamane, Horanadu,
Kalasa Hobli, Mudigere Taluk,
Chikkamagaluru District.

... Plaintiff

(By Sri. Ananthesh.K.S, Adv.)

AND :

1. Sri.Sudarshan S/o Anantharajaiah,
Aged about 50 years,
R/o Horanadu Road, Kalasa,
Kalasa Hobli, Kalasa Taluk,
Chikkamagaluru District.

2. Sri.Harshendra S/o late Adirajaiah,
R/o Near Degree College,
Horanadu Road, Kalasa,
Kalasa Hobli, Kalasa Taluk,
Chikkamagaluru District.

...Defendants

(By Sri.Rajeev.R.Bhat, Adv.)

**PARTIES TO IA.No.5****BETWEEN :**

Girija W/o Manjappa Gowda *...Applicant*

AND :

Sudarshan S/o Anantharajaiah & Anr. *...Opponents*

1	Provisions under which the application is filed	Under section 6 Rule 17 R/w section 151 of CPC
2	Relief sought for	Amendment of pleadings
3	The date on which the application is filed	02.09.2023
4	Number of the application	5
5	The date on which the objection filed by opponents	-
6	The date on which the order was passed on the said application	20.01.2024

(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

ORDER ON IA NO:5

The plaintiff has filed the present application under Order 6 Rule 17 R/w section 151 of CPC, when the case



stood for hearing on IA.No.1, seeking an order of this court to amend the plaint as made mentioned in the application.

2. In the affidavit annexed to the application, the plaintiff has deposed that she has filed the present suit for the relief of permanent injunction. At the time of institution of suit, some facts have not pleaded in the plaint, which are necessary for adjudication of the case. Therefore, the present application is filed to amend the plaint and to plead facts which have been left out. It is further deposed that the proposed amendment neither change the nature of suit nor bring new cause of action. On the other hand, the proposed amendment are necessary for determine the real dispute between the parties. Therefore, if the application is allowed, no loss or injury will be caused to the other side. On the other hand, if the application is rejected, the plaintiff will be put into hardship, which can't be compensated in any means. Hence, prayed for allow the present application and permit her to amend the plaint as made mentioned in the application.

3. In spite of opportunities, the defendants have failed to filed their objection statement to the aforesaid application.

4. In view of the above rival contentions of the plaintiff, the following points arise for consideration.



1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

2. What order?

5. Having heard both side, the court perused the application, affidavit and other materials made available on record. Now, the findings of the court to the above points are as follows.

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

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

REASONS

6. POINT NO.1: The plaintiff has filed the present suit for the relief of permanent prohibitory injunction with respect to suit property against the defendants. When the case was stood for hearing on IA.No.1, the plaintiff has moved the present application, seeking an order of this court to amend the plaint as made mentioned in the application. The proposed amendment which mentioned in the application read as follows:-



Proposed Amendment:

- .1 ದಾವೆಯ ವಾದ ಪತ್ರದ 6 ಪ್ಯಾರದ 3 ನೇ ಪುಟದ 2 ನೇ ಸಾಲಿನಲ್ಲಿ ದಾವೆಯಾಗಿರುತ್ತದೆ ಎಂಬ ಪದದ ನಂತರ ಸೇರಿಸಬೇಕಾದ ಪ್ಯಾರ ಈ ಕೆಳಗಿನಂತೆ ಇರುತ್ತದೆ.

ಪ್ಯಾರ 6(ಎ)

ವಾದಿಗಳು ಈ ಮೂಲಕ ನಿವೇದಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ದಾವ ಶೆಡ್ಯೂಲ್ ಸ್ವತ್ತಿನ ಎಲ್ಲಾ ದಿಕ್ಕಿನಲ್ಲಿ ಸರಕಾರಿ ಜಾಗವನ್ನು ಹೊಂದಿರುತ್ತಾರೆ ಎಂದು ಅರಣ್ಯ ಹಕ್ಕು ಪತ್ರದಲ್ಲಿ ಸ್ಪಷ್ಟವಾಗಿ ನಮೂದಿಸಿರುತ್ತದೆ. ಆದುದರಿಂದ ಪ್ರತಿವಾದಿಗಳಿಗೆ ಯಾವುದೇ ವಿಧದಲ್ಲಿಯೂ ಬಾಜುದಾರರು ಆಗಲು ಸಾಧ್ಯವಿರುವುದಿಲ್ಲ. ವಾದಿಗಳ ಈ ದಾವೆಯ ಸರ್ವೆ ನಂ.175ರ ಅರಣ್ಯ ಹಕ್ಕು ಪತ್ರ ಪಡೆದ ಜಾಗಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಸುತ್ತಲೂ ಸರಕಾರಿ ಜಾಗವು ಆಗಿರುವುದರಿಂದ ಅರಣ್ಯ ಇಲಾಖೆಯವರು ಕಲ್ಲಿನ ಬಾಂಡುಗಳ ಮೂಲಕ ಗಡಿಗುರುತಿಗಳನ್ನು ಸ್ಪಷ್ಟವಾಗಿ ಗುರುತಿಸಿರುವುದರಿಂದ ಪ್ರತಿವಾದಿಗಳಿಗೆ ವಾದಿಗಳ ಸ್ವಾಧೀನ ಅನುಭವದ ಸ್ವತ್ತಿಗೆ ಯಾವುದೇ ವಿಧದ ಹಕ್ಕು ಬಾಧ್ಯತೆಗಳು ಇರುವುದಿಲ್ಲ. ಇದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಅರಣ್ಯ ಇಲಾಖೆಯವರು ಒಟ್ಟು 9 ಬಾಂಡು ಕಲ್ಲುಗಳನ್ನು ನಿರ್ಮಿಸಿರುವ ಮೂಲಕ ಅರಣ್ಯದ ಗಡಿ ಪ್ರದೇಶವೆಂದು ಗುರುತಿಸಿಕೊಂಡಿರುವುದರಿಂದ ಪ್ರತಿವಾದಿಗಳಿಗೆ ಯಾವುದೇ ವಿಧದ ಹಕ್ಕುಗಳು ಇರುವುದಿಲ್ಲ ಮತ್ತು ಪ್ರತಿವಾದಿಗಳು ಎಂದಿಗೂ ದಾವ ಸ್ವತ್ತಿನ ಬಾಜುದಾರರಾಗಿ ಸ್ವಾಧೀನ ಅನುಭವ ಎಂದಿಗೂ ಇರುವುದಿಲ್ಲ. ಇದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಪೋಟೋ ಮತ್ತು ಸಿಡಿಯನ್ನು ಸಹ ಹಾಜರುಪಡಿಸಿದ್ದು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ಪರಿಗಣಿಸಬಹುದಾಗಿರುತ್ತದೆ. ಮತ್ತು ಪ್ರತಿವಾದಿಗಳು ಮಾತ್ರ ವಾದಿಗಳ ಸ್ವಾಧೀನ ಅನುಭವದ ಕಾಫೀ, ಕಾಳುಮೆಣಸು ಇತರೆ ತೋಟಗಾರಿಕೆ ಬೆಳೆಗಳ ಜಾಗವನ್ನು ಅತಿಕ್ರಮಿಸಬೇಕೆಂಬ ಉದ್ದೇಶದಿಂದ ತೊಂದರೆಯನ್ನು ನೀಡುತ್ತಿರುವುದರಿಂದ ಮತ್ತು ಅವರ ಅತಿಕ್ರಮಿಸುವುದನ್ನು ತಡೆಯುವ ಉದ್ದೇಶದಿಂದ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಸಲ್ಲಿಸುತ್ತಿರುವ ಈ ದಾವೆಯಾಗಿರುತ್ತದೆ.

7. Order 6 Rule 17 of CPC confers the jurisdiction to the court to allow either party to the suit to alter or amend their respective pleadings at any stage of the proceedings



and on such terms as may be just. Such amendments should be for determination of real questions in controversy between the parties. Pre-trial amendments are to be considered more liberally, than those which are sought after the commencement of trial. Therefore, whether the proposed amendment is just and proper for determining the real questions in controversy between the parties is the cardinal test and it is the primary duty of the court to decide that whether the amendment sought is necessary to decide the real questions in dispute between the parties or not.

8. It is to be noted here that inspite of opportunities, the defendants have not filed objection statement to the present application. Admittedly, the present application moved by the plaintiff, when the case was stood for hearing on IA.No.1. Thus, herein this case, evidence is yet to be commenced. On perusal of the proposed amendment it makes very clear to the court that the plaintiff wants to insert the para No.6(a) in addition to the pleadings which already pleaded in the plaint. Thus, by way of the proposed amendment, the plaintiff is not withdrawing the any admission which already made. Therefore, if the application is allowed, no hardship will be caused to the defendant, as they would get an opportunity to file additional written statement.



9. It is to be noted here that the proposed neither change the nature of suit n or bring new cause of action. Moreover, the application is moved before commencement of trial. The Hon'ble Apex Court in catena of the decisions it is observed that the amendment applications which filed prior to commencement of trial should be consider in liberal approach. Herein this case, the plaintiff has stated in the affidavit that he could not plead the proposed amendment tax at the time of filing suit. Further, the proposed amendment is required for the purpose of determining the real questions in controversy between the parties. Accordingly, this court answer point No.1 is **in the Affirmative.**

10. **Point No:2:** In view of the above discussions on point No:1 this court proceed to pass following:

: O R D E R :

The IA No.5 filed by the plaintiff under 6 Rule 17 R/w section 151 of CPC is hereby allowed on cost of Rs.200/-.

Consequently, the plaintiff is hereby permitted to amend the plaint as made mentioned in the application



within 14 days from the date of this order.

*(Dictated to the stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **20th day of JANUARY, 2024**)*

(Sri. Sachin. D)
Prl. Civil Judge & JMFC.,
Mudigere.

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