

KACM600000142021



**IN THE COURT OF CIVIL JUDGE AND J.M.F.C. AT,
SRINGERI**

Dated on this 05th day of June 2023

Present:

Sri. Dasari Kranti Kiran, B.Com.,LL.B.,
Civil Judge and JMFC,
Sringeri.

O.S.No.01/2021

Plaintiff: T.A. Usman
S/o. Late Abdul,
Aged about 44 years,
R/o. Addagadde,
Kelakoppa Village,
Addagadde Post,
Sringeri Taluk.
(By Sri V.R.N, Adv.)

-Vs-

Defendant: Panchayath Development Officer,
Addagadde Village Panchayath,
Addagadde,
Sringeri Taluk.
(By Sri .H.R.U, Adv.)

**Orders on application IA.No.2 filed under 6 rule 17 read
with 151 of C.P.C**

This is the application brought by the applicant/ plaintiff under order 6 rule 17 R/w 151 of CPC seeking for amendment of plaint as prayed in the application.



2. It is submitted in the application that this is the suit brought by the plaintiff as against the defendant seeking for the relief of permanent injunction with respect to the suit property. It is further submitted in the a Sd/-pplication that at the time of filing of suit the suit was brought to the extent of 60x40 feet with respect to the structure and vacant land existing in or around the structure which falls within the fence put up by the plaintiff. The applicant further submitted that he is not willing to continue the suit to the entire extent and he wanted to stick on the suit to the existing structure which exist to an extent of 26x48 feet. Further submitted that the amendment do not change the nature of the suit and prays to allow the application.

3. Per contra the defendant filed an objection to the above application and contended that the application is not maintainable either in law or on facts and the same is liable to be dismissed.

4. Further contended that earlier the applicant in his plaint submitted that he is in possession of the structure to an extent of 20x25 feet under the total extent of 60x40 feet and now the applicant has come up with the application to change the extent of structure as 26x48 feet which is not permissible under law. Further contended that the said amendment will change the nature of the suit and hence prays to dismiss the application.

5. Heard both sides and perused the material available on record.

6. On perusal the following points would arise for the consideration is as under:



1. Whether the applicant has made out grounds to allow the application?
2. What Order?
7. The answers to the above points are as follows:

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

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

REASONS

8. Point No.1: On perusal this is the suit brought by the plaintiff as against the defendant seeking for the relief of permanent injunction with respect to suit property. On perusal the defendant In the also appeared and filed the written statement and on perusal of written statement the defendant is not disputing about the existence of the suit survey number. Further on perusal this is the suit for injunction and the burden is on the plaintiff to prove his possession to whatever extent he pleads in the plaint schedule property. However, on careful perusal it is the specific case of the plaintiff that he is in possession over the suit property to an extent of 60x40 feet in Sy.No.150 of Kelkoppa Grama Village, Kasaba Hobli, Sringeri Taluk. Though he has pleaded in the schedule that the structure is to an extent of 20x25 feet but he pleaded that the said structure is about approximately about 20x25 feet. Hence, it clearly shows that at the time of filing the suit the applicant is not aware about the exact extent of structure existing in 60x40 feet. As discussed about the burden is on the plaintiff to prove his possession to whatever extent he pleads in the plaint. Moreover the extent to which he pleaded to be in possession is



in the extent of 60x40 feet. Further, whether the existing structure is 20x25 feet or 26x48 feet is the matter of trial and burden is on the plaintiff to prove the same. Further to avoid the multiplicity of the proceedings and to provide fair opportunities to both the parties the application deserves to be allowed. Hence the point No.1 is answered in the Affirmative.

9. Point No.2: In view of foregoing reasons on Point No.1, this court proceeds to pass the following:

ORDER

The application I.A.No.2 filed under order 6 rule 17 read with section 151 of C.P.C. is hereby allowed.

(Dictated to the Stenographer, transcribed by him on computer, print out taken by him, corrected, signed and then pronounced by me in the Open Court on 05th day of June 2023.)

Sd/-
(Dasari Kranti Kiran)
Civil Judge & JMFC,
Sringeri.