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IN THE COURT OF CIVIL JUDGE AND ADDL. J.M.F.C, TARIKERE

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & Addl. J.M.F.C, Tarikere**

Dated this the 11th of AUGUST 2025

ORIGINAL SUIT No. 33/2022

BETWEEN:

Sri. Praveen **PLAINTIFF**
-AND-
 Sri. Gangadharappa and others **DEFENDANTS**

IN I.A.NO.XII

Sri. Praveen **APPLICANT/ PLAINTIFF**
-AND-
 Sri. Gangadharappa and others **OPPONENTS/
PLAINTIFFS**

PARTICULARS

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order VI Rule 17 R/w S.151 CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Amendment of plaint</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>16.03.2022</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.XII</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>06.04.2022</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>11.08.2025</i>

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ORDERS ON I.A. NO. XII

1. Applicant/ Plaintiff has filed the instant application under Order VI Rule 17 r/w Section 151 of C.P.C seeking amendment of the plaint to the effect made in the application.
2. In the affidavit appended to the application, the Applicant/Plaintiff has contended that the suit is filed seeking the relief of mandatory injunction and other consequential reliefs. Due to the non-availability of certain documents at the time of filing, certain facts could not be pleaded, and some errors have crept into the plaint due to inadvertence. The proposed amendment would not change the nature of the suit or its cause of action. The amendment is necessary for the effective adjudication of the claim against the Defendants. If the application is allowed, no prejudice would be caused to the other side; however, if it is rejected, the Plaintiff would suffer irreparable loss and hardship. Hence, the Plaintiff prays that the application be allowed.
3. Resisting the application, Defendant No.1 has filed objections, contending that the application is not maintainable either in law or on facts, and that the supporting affidavit is filled with

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falsehoods. It is further contended that the amendment would alter the nature of the suit and is intended to harass the Defendants. The very filing of the suit is alleged to be with an ulterior motive. The application is aimed at protracting the proceedings and, therefore, is liable to be rejected.

4. The rest of the Defendants have not filed objections despite being granted sufficient time. Hence, objections of other Defendants to the application have been taken as not filed.

5. Heard both sides.

6. Having heard the rival contentions and on perusal of the materials, the points that would now arise for my consideration are as under -

Point No.1 : Whether the amendment is necessary to determine the real questions in controversy between the parties?

Point No.2 : What Order?

7. Now, my findings to above points is as follows -

Point No.1 : In the Affirmative

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

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REASONS

8. Point No.1: The instant suit is filed seeking relief of mandatory injunction and consequential relief of permanent prohibitory injunction concerning the suit schedule property and such other ancillary relief. The suit is now at the stage of evidence on the side of the Plaintiff. At this stage, the Applicant/ Plaintiff has come with the instant application seeking amendment of his plaint. It would now be significant to reproduce the proposed amendment –

1) In plaint page No.2 in para No.4, 2nd line after the words towards, "western side of Asst No. 190, which belongs to 1st defendant" is to be added and delete village panchayath and in the same place add "State Government"

2) In plaint page No.2 in para No.6, at the end of 1st line i.e., 'property of State Government' is to be added. At the last line of para No.6 after the words suit 'A' is to be added.

3) After the para No.6 following pleading be added as 6(a)

6(a) It is submitted that, defendant No.6 also encroached the property of village Panchayath Amruthapura to an extent of 10 ft towards south of Asst No. 191, which is standing in the name of defendant No.6, which is morefully described as 'B' schedule property.

4) After the para No.7 following pleading be added as 7(a) and 7(b) and 7(c).

7(a) It is submitted that, towards south of Asst No. 191, 'B' schedule property is situated which is the public property,

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wherein the defendant No.6 has made illegal construction, since defendant No.6 has got no vested and exclusive interest over the 'B' schedule property, thus, illegal construction has to be removed by way of Mandatory injunction.

7(b) It is further submitted that, Amruthapura village is well known for its sculpture i.e., Hoysaleshwara Temple built by Hoysala dynasty, by "Veeraballala II" in the year 1196, thus the temple and the village listed in National Heritage and administered by Archeological Department. It is submitted that, on perusal of Panchayath records, the 1st and 6th defendant have unauthorisedly constructed new house towards, the western side of Asst No. 190 measuring 5 ankana and towards south of Asst No. 190 i.e., 'B' schedule property. It is further submitted that, towards western side of Asst No. 190 road leading and connecting road to Tarikere-Hosadurga Main Road and which also leading Kuntinamadu village also. The said road is maintained by PWD, Tarikere sub-division and the said road is classified as District main road and the appurtenants of abutting road have to left 25 mtrs.

7(c) It is submitted that, on 14/07/2020, office of Archaeological department survey of India, Shivamogga Sub Circle, Kallahalli, 2nd stage, Vinobha Nagara, Shivamogga, has issued stop notice for unauthorized construction in regulated area of Amrutheshwara Temple to defendant No.1 and 6, since the defendant No.1 and 6 being carrying out unauthorized construction/ reconstruction within the regulated area of 125 mtrs towards eastern side of Amrutheshwara Temple, Amruthapura, Centrally protected Monument without obtaining NOC from the competent Authority under the provisions of Ancient Monuments and Archaeological sites and Remains Act, 1958 as Amended by the Ancient Monuments and Archaeological Sites and Remains (Amendment and validation) Act 2010. It is further submitted that, since the defendant No.1 and defendant No.6 have illegally carrying out the construction, the police have submitted the charge sheet against defendant No. 1

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and 6 in C.C No. 1175/2021 and 1176/2021, as envisaged under section 30(A) 30 (B) of the said Act referred which are pending for adjudication.

5) At beginning of schedule 'A' is to be added

6) After the schedule following schedule is to added as 'B' schedule.

'B' SCHEDULE

Gramapanchayath property measuring 10 ft, situated at Amruthapura village, Amruthapura Hobli, Tarikere Taluk,, bounded on:-

<i>East By</i>	<i>:</i>	<i>Property of Maheshwarappa (Asst. No.195)</i>
<i>West By</i>	<i>:</i>	<i>Property belongs to Panchayath</i>
<i>North By</i>	<i>:</i>	<i>Property of Defendant No.2 (Asst No.191)</i>
<i>South By</i>	<i>:</i>	<i>Panchayath Road</i>

9. Before adverting to the factual matrix any further, it would be beneficial to first have a conceptual understanding of the law relating to amendment of pleadings. Order VI Rule 17 of C.P.C governs aspect relating to amendment of pleadings and the following judgement of the Hon'ble Supreme Court of India beautifully encapsulates the scope and ambit of the law relating to amendment of pleadings. In **LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER** reported in **2022 SCC**

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OnLine SC 1128, the Hon'ble Supreme Court of India has held at Para No.70 as under -

Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

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- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) the amendment changes the nature of the suit,*
- (iii) the prayer for amendment is malafide, or*
- (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely*

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new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, [2022 SCC OnLine Del 1897](#))*

- 10.** Keeping in mind the guidelines issued by the Hon'ble Supreme Court of India in LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER (Supra) and the very provision of law, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

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- 11.** To elaborate on the proposed amendment now sought to the made to the existing plaint, it is seen that the Applicant/ Plaintiff is only intending to place some additional facts which were left out while preparing the plaint which in my opinion, is only in aid of the already existing averments of his plaint.
- 12.** Amendment of pleadings should generally be permitted where it would result in solution of real controversy between parties, without altering the cause of action. It is settled law that amendment cannot be claimed as a matter of right under all circumstances, but Court ought not to adopt hyper technical approach while deciding such prayers. In other words, Court should be liberal particularly where any prejudice suffered by the other side can be compensated by costs. Applying these principles, it is found that the proposed amendment is necessary to determine the real questions in controversy between the parties. There is of course some delay in preferring the application seeking amendment but such delay though found to be inordinate, is not one which shocks the conscience of the Court so as to reject the prayer for amendment of the plaint. Hence, the delay is decided to be

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met with appropriate costs and accordingly, the Point No.1 which has arisen for my consideration is answered in the ***Affirmative.***

13. Point No.2: For the foregoing reasons, the following -

ORDER

I.A No.XII filed by the Applicant/ Plaintiff under Order VI Rule 17 r/w Section 151 of C.P.C is hereby allowed on cost of Rs.200/-.

Resultantly, Applicant/ Plaintiff is permitted to carry out the amendment and furnish amendment plaint within the next hearing date.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 11th of AUGUST, 2025)

sd/-

**(Rahul Shettigar)
Civil Judge & Addl. J.M.F.C,
Tarikere.**