

KACM710033972021



**IN THE COURT OF THE CIVIL JUDGE & ADDL J.M.F.C., AT:
TARIKERE.**

Present

SMT. ROOPA M .D
B.A (L) L.L.B.
CIVIL JUDGE & ADDL. JMFC, TARIKERE.

O.S.No.349/2021

Dated on this the 15th day of March 2022

Plaintiff/s : **B.Basavarajappa,**
S/o late Patel Bommegowda,
Aged about 79 years,
Agriculturist,
R/o Hosahalli,
Amruthapura Hobli,
Tarikere Taluk.

(By Sri.T.L.Prakash-Adv.)

V/s

Defendant/s:

1. **Smt.Mallamma,**
W/o late K.B.Shankrappa,
Aged about 80 years.
2. **Smt.Jayamma,**
W/o Thammappa,
Aged about 60 years.
3. **Thammappa,**
S/o late Siddappa,
Aged about 68 years.

All are agriculturists,
R/o Hosahalli,
Amruthapura Hobli,

Tarikere Taluk.

(D1 By Sri.N.R.Chandrashekhar-Adv.)
(D2, 3 By Sri.H.R.Somashekharappa-Adv.)

PARTIES ON IA.No.4

Applicant/ : Basavarajappa
 Plaintiff

/Vs/

Opponents/ : Mallamma & Ors.
 Defendants

ORDER ON IA NO.4 FILED BY THE PLAINTIFF UNDER

ORDER 4 RULE 17 R/W SEC.151 OF CPC

The applicant / plaintiff filed the present I.A. No.4 U/o.6 rule 16 and 17 R/w. Sec.151 of CPC seeking to amend the plaint.

2. Allowing the said application is opposed by the defendant No.1 to 3 by filing their respective objections.

3. Heard plaintiff and defendants. The defendant No.1, 2 and 3 have filed their written arguments separately.

4. The following points arise for my consideration:-

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

2. What order?

5. My answer to the above points are:-

Point No.1 : In the Affirmative

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

REASONS

6. **Point No.1:-** The suit is one for declaration and permanent injunction. When the case is posted for hearing on IA.No.1, the present application is filed by the plaintiff to amend the plaint. By way of amendment, the plaintiff intends to amend plaint as follows:-

In the plaint schedule and item No.1 schedule after the word measuring “1 acre 34 guntas including 17 guntas of kharab may kindly be deleted and in place of that “1-17 guntas of” may kindly be added.

7. In the accompanying affidavit annexed to the I.A.No.4, it is stated by the plaintiff that the suit schedule property is an areca garden, measuring to an extent of 1 acre 17 guntas and 17 gutnas is ‘halla kharab’ which is the part and parcel of plaint schedule property. While seeking temporary injunction, the total measurement is shown as 1 acre 34 guntas which includes 17 guntas kharab. The RTC and revenue documents does not disclose about the 17 guntas of kharab. Though, the kharab land is a part and parcel of the plaint schedule property, the plaintiff is in actual possession of 1 acre 17 guntas. The proposed amendment neither changes the nature of suit nor the cause of action. Therefore, the present application.

8. The counsel for the defendants No.1 to 3 have filed separate objections to the above said application and the defendant No.1 has contended that the plaintiff is

seeking amendment to make arrangement with the extents shown in the RTC and other documents. The entries shows that the suit is filed based on the RTC and the same becomes actual possession. Therefore, the application is liable to be dismissed.

9. The defendant No.2 and 3 have filed common objection and contended that the plaintiff had all documents at the time of filing the suit to understand about his property and description. The plaintiff knowingly has filed the suit originally to an extent of 1 acre 34 guntas though the RTC in his name was for 1 acre 17 guntas in order to grab the land of the defendants. With or without the amendment the description of the property is false, frivolous and dishonest one to grab the property of the defendant and the one which is developed by the defendants. The affidavit that kharab belongs to the land is universal truth and it depends on only nature of kharab. Therefore, the proposed amendment is liable to be dismissed.

10. Perused material on record. It is the abundant duty of the plaintiff to clearly and unambiguously plead his case. In the case on hand, it is stated by the plaintiff that the suit has been filed seeking temporary injunction including the kharab land of 17 gutnas and hence, the plaintiff intends to exclude the same. The defendants on the other hand have contended that inspite of knowledge about the documents the present application is filed to grab

the property of defendants. The issues are yet to be framed and when the case stood posted for hearing on IA.No.1, the present application has been filed. It is well laid principle of law that the plaintiff being the master of the suit can relinquish right over a part of the property or whole of any property. In the case on hand, the plaintiff intends to seek relief by excluding the kharab land from his claim. At this point of time, there is no necessity to discuss about the nature of Kharab and right of the parties with respect to Kharab as such just looking to the merits of the present application, it is evident that the proposed amendment does not change the nature of suit and at this point of time, the contention of the defendants that the description of the property with or without the amendment is inappropriate cannot be considered and the same is subject to merits of the case. As such, allowing the said application will not inflict the opposite party into irremediable character. Therefore, to avoid multiplicity of proceedings and for fair adjudication of the matter, I am of the opinion that the present application deserves to be allowed and hence, I answer point No.1 in the Affirmative.

Point No.2:-

11. From the foregoing discussions and reasons stated therein and in view of my findings to point No.1, I proceed to pass the following:

ORDER

I.A.No.IV filed by the applicant/ plaintiff
Under Order 6 Rule 16 and 17 R/w Sec.151
of CPC is hereby allowed.

For amendment of the plaint and
amended plaint.

*(Dictated to the stenographer, transcribed and typed by him,
corrected, initiated and then pronounced in the open Court on this
the 14th day of March 2022.)*

Sd/-
(Roopa M.D)
Civil Judge & J.M.F.C.
Tarikere.