

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

**Present:** S.M.Arutagi, B.Com., LL.B. (Spl.),  
Addl. Civil Judge & JMFC, Tarikere.

**OS. No. 152/2014.**

**Dated: 26<sup>th</sup> Day of August, 2015.**

**Plaintiff** : Gowdara Suresh and others  
(Reptd. By :Sri. K.L.R./R.S., - Adv.)

**-V/s.-**

**Defendants** : H.T.Ravikumar and others  
(Reptd. By :Sri. G.V.K., - Adv.)

**Applicant/:**  
**Plaintiff** Gowdara Suresh and others  
**In IA.No.11**

**-V/s.-**

**Opponent:**  
**Defendant** H.T.Ravikumar and others  
**In IA.No.11**

**ORDERS ON IA.NO-11**

The order arises out of application filed by the plaintiff U/O.6 Rule 17 R/W.151 C.P.C. seeking for amendment of suit schedule measurement prayed in the application.

2. The brief facts averred in the affidavit annexed to the application are that:-

The applicant is third plaintiff in this case and he and along with other plaintiff filed have this suit against defendant for the relief of permanent injunction. Further he stated that, at the time of furnishing measurement by mistake and oversight measurement 300 feet was typed in the plaint and I.A. schedule instead of typing the 1250 feet. But the boundaries of the plaint and I.A.s schedule are tallies 1250 feet. Therefore, he sought for proposed amendment. Further it is stated that, the proposed amendment will not change the nature of the suit and will not change any new cause of action and the proposed amendment is very necessary for end the litigation between the parties. Further it is stated that, if the amendment application is allowed, no injury continuous is caused to the defendant. On the other hand, if the proposed amendment is not allowed, the plaintiffs will be put to great and irreparable loss. Further it is stated that, the proposed amendment is necessary to decide the controversy between the parties. Therefore, sought for allow the application.

3. On the other hand, the counsel for defendants filed objection to I.A.No.11 stating that, the application and affidavit filed by the plaintiff are false frivolous and not maintainable under law and facts. Further if the application is allowed which leads to multiplicity of proceedings and also change the nature of the suit

and create new cause of action and also changes the boundaries, what he given in the plaint and the defendants are put to great and irreparable loss. Further it is stated that, if the amendment is allowed, the plaintiff is easy to take law in hands and also stated that, the plaintiff has filed this application only to drag on the proceedings. Further he denied that, at the time of furnishing measurement by mistakenly and oversight measurement was typed as 300 feet instead of 1250 feet. The boundaries of plaint schedule and I.A. schedule could not be tally the boundaries. It creates the new boundary in the eastern side of suit schedule boundaries. There is no land of defendant towards eastern side of the property and stated that, some other persons are situated and they are not parties in this suit. Therefore the plaintiff cannot entitle for any relief claimed in the application.

4. Further it is stated that, the original length of defendant property is 1020 feet. Therefore, on these grounds, sought for reject the application with costs.

5. On the basis of the above pleadings, the following points are arisen for my consideration are:-

1. Whether the applicant/plaintiff has made out sufficient ground to allow his interim application No.8?
2. What order?
6. My findings on the above points are as follows:-
  - Point No.1 : In the Affirmative.
  - Point No.2 : As per the final order for the following:

### **REASONS**

**7. Points No.1 :-** It is pertinent to note that, the plaintiffs have filed this suit for permanent injunction against the defendants.

8. To the aid of main relief, the plaintiff NO.3 has filed present application seeking for amendment of plaint, according to the plaintiff the measurement of the property is 1250, but it is mistakenly and through oversight it is typed as 300 feet. Therefore, now the plaintiff has wants to change the measurement of the suit schedule property and filed the present application for amendment of plaint. Further it is specifically stated that, the present proposed amendment will not changes the measurement of suit and will not changes any new cause of action. It is very much necessary to end up the litigation between the parties and also the proposed

amendment is necessary to decide the controversy between the parties. Therefore, sought for allow the application

9. On the other hand, the defendants have strongly contended that, the application and affidavit filed by the plaintiff are false frivolous and not maintainable under law and facts. Further if the application is allowed which leaves to multiplicity of proceedings and also change the nature of the suit and create new cause of action and also changes the boundaries, what he given in the plaint and the defendants are put to great and irreparable loss. Further it is stated that, if the amendment is allowed, the plaintiff is easy to take law in hands and also stated that, the plaintiffs have filed this application only to drag on the case. Further he denied that, at the time of furnishing measurement by mistakenly and oversight measurement was typed as 300 feet instead of 1250 feet. The boundaries of plaint schedule and I.A. schedule could not be tally the boundaries. It creates the new boundary in the eastern side of suit schedule boundaries. There is no land of defendant towards eastern side of the property and stated that, some other persons are situated and they are not parties in this suit. Therefore the plaintiff cannot entitle for any relief claimed in the application.

10. Further it is stated that, the original length of defendants property is 1020 feet. Therefore, prayed for reject the application.

11. On perusing the both side pleadings and documents produced before this court while perusal of amendment application, the plaintiff wants to change the measurement 300 feet to 1250 feet. But on the other hand, defendant stated that, the original length of his property is 1020. Therefore whether the measurement of the suit schedule property 300 or 1020, it cannot be decide at this stage. Further it is noted that, whether the proposed amendment will change or alter the nature of the suit or introduce the new facts, it should be taken into consideration while disposing the application.

12. During the course of argument, the counsel for plaintiff vehemently argued that, the boundary prevails and not extent. In support of his argument, he relied ruling reported in **2008(4) KCCR 2852 between Gangappa Bankappa Angadi V/s. Basappa Bankappa Sannakoodala and others.**

***Boundary–extent-Dispute-boundary prevails and not extent.***

13. In the above case, the lordship has held that, it is settled principles of law that, whenever there is discrepancy between

extent and boundary, the boundary shall prevail. When the boundaries are not definite, the extent of land stated shall alone become the criteria for fixing the boundaries. It is impossible for the tribunal to invoke powers to grant more extent of the land than what was granted. On perusing the above-cited decisions, the above-cited decisions are aptly applicable to the present case in hand.

14. Further in a judgment reported in **KCCR 2009 (1), KCCR 89 between Papanna V/s. Venkappa Swamy.**

**C.P.C. code 1908-order 6, rule 17-amendment of plaintiff-basic structure of the suit is not altered by the proposed amendment-whether amendment could be allowed-held, Yes.**

15. Therefore in this case, the lordship has held that, the basic structure of the suit is not altered by proposed amendment and what is sought to be changed his nature of relief sought for filed plaintiff amendment can be allowed as it would curtail multiplicity of proceedings. If the proposed amendment is not touching basic relief sought by plaintiff and he is in no way affect or prejudices, the rights of the defendants and such amendment is to avoid filing of another independent suit by the plaintiff, on the

same cause of action, for that relief, the amendment would incorporated in the present suit itself.

16. Therefore, on perusal of the above-cited judgment, the lordship has held that, the basic structure of the suit is not altered by the proposed amendment, it can be allowed. Therefore on looking into the pleadings of the parties and documents produced before this court, the plaintiff has made out sufficient ground to allow his application. Accordingly, I answer point No.1 in the Affirmative.

17. **Point No.2:-** In view of the findings given on the above said point, I proceed to pass the following:-

**ORDER**

IA.No.11 filed by plaintiff No.3/applicant  
under Order 6, Rule 17 R/w Sec.151 of Code  
of Civil Procedure is here by allowed.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the day of 26<sup>th</sup> August 2015.)

**(S.M.ARUTAGI)**  
**ADDL. CIVIL JUDGE AND**  
**J.M.F.C, TARIKERE.**