

**ORDER ON IA NO.VII FILED U/O VI RULE 17 R/W SECTION
151 CPC**

The plaintiff has filed this application under Order VI Rule 17 R/w Sec.151 of C.P.C seeking for amendment of plaint as sought for in the application.

2. In the affidavit accompanying to IA the GPA holder of the plaintiff stated that his mother has filed the above suit for the relief of Permanent Injunction against the defendants. The suit schedule property is belonged to his mother as she acquired the same under gift deed. They have constructed house in the suit schedule property and residing therein. On the western side of the suit schedule property there exist a road and they are using same since their ancestors period. Though the defendants have no manner of right, title or interest over the said road they are obstructing them in using the said road. It is further stated that in para 6 of their plaint they need to add additional pleading that they are enjoying the passage/road naturally since their ancestors period and they also need to amend the prayer column with regard to said usage. It is further stated that in the schedule also there is mistake in mentioning

the western side boundary as such it is just and necessary to amend the schedule attached to the plaint. The proposed amendment is just and necessary to determine the real question in controversy between the parties. For all these reasons he prayed to allow the application.

3. On the other hand the defendants have filed detailed objection opposing the application and submitted that the application is not maintainable either under law or on facts and same is liable to be rejected. It is further submitted that the proposed amendment is inconsistent with existing pleadings. The proposed amendment is sought based on imaginary facts without any documents in support of the same. It is contended that the defendant no.1 is absolute owner of the property bearing khata no.18/3 measuring East to West 32 feet and North to South 25 feet situated at Palya Village, Palya Hobli, Kollegal Taluk as he acquired the same under gift deed executed by the defendant no.2 and his legal heirs. In the said property the defendant no.1 has constructed house and residing therein. Though the plaintiff has no manner of right, title or interest over the above said property she is seeking her right of way in the above said property. Since the defendants have already constructed house in their property now the plaintiff cannot seek amendment of the plaint as sought for in the application, as such the present application is not maintainable. Further the

proposed amendment would change the nature of the suit. For all these reasons she sought for rejection of the application.

4. Heard both the counsel for the plaintiff and defendants. Perused the materials on record.

5. The plaintiff has filed the above suit against the defendants for the relief of Permanent Injunction. Now the plaintiff without changing her earlier contentions is seeking amendment in the body of the plaint, schedule and prayer column by adding additional pleading in the body of the plaint with regard to the road which she alleged to be used since her ancestors period. The said proposed amendment is only a clarificatory in nature and it would not in any way change the nature of the suit or cause of action. Hence, no prejudice will be caused to the defendants if the proposed amendment is permitted. Keeping in view the rival contentions of the parties, the proposed amendment is necessary to decide all the controversies involved in the suit completely and effectually. No doubt there is delay in filing the application. The inconvenience that may be caused to the defendants may be compensated by imposing costs. For all these reasons, it is fit case to exercise the discretion to allow the application and permit the plaintiff to amend the plaint as sought for in the IA. Hence, I proceed to pass the following:-

ORDER

IA No. VII filed by the plaintiff under Order VI Rule 17 R/w Sec.151 of Code of Civil Procedure is hereby allowed on cost of Rs.500/-.

The plaintiff is permitted to amend the plaint as sought for in the IA No.VII.

For amendment and amended plaint.

(Dictated to the Stenographer, transcribed by her on Computer, same is corrected and then pronounced by me in the open court on this the 22nd Day of April 2022).

Prl.Civil Judge and JMFC.,
Kollegala.

CORRECTED

OK

